

**National Archives and Records Administration (NARA)
Freedom of Information Act (FOIA) Advisory Committee Meeting**

Meeting Minutes – April 17, 2018

The FOIA Advisory Committee convened at 10:00 a.m. on Tuesday, April 17, 2018, in the William G. McGowan Theater at the National Archives Building, 700 Pennsylvania Avenue, N.W., Washington, D.C. 20408-0001.

In accordance with the provisions of Public Law 92-463, the meeting was open to the public from 10:00 a.m. to 1:00 p.m.

Meeting materials are available on the Committee's website at <https://ogis.archives.gov/foia-advisory-Committee/2016-2018-term/Meetings.htm>.

Committee members present in the McGowan Theater:

- Alina Semo Chair, Office of Government Information Services, NARA
- David Pritzker, Administrative Conference of the United States
- Melanie A. Pustay, U.S. Department of Justice
- Nate Jones, National Security Archive
- Raynell Lazier, Consumer Financial Protection Bureau
- Michael Bell, Department of Health and Human Services
- Thomas Susman, American Bar Association
- Michael Bekesha, Judicial Watch
- Chris Knox, Deloitte
- Sean Moulton, Project on Government Oversight
- Logan Perel, Department of the Treasury

Committee members on the phone:

- Ginger McCall, Department of Labor
- Stephanie Carr, Department of Defense
- Jill Eggleston, U.S. Citizenship and Immigration Services
- Sarah Kotler, Food and Drug Administration
- James Valvo, Cause of Action Institute
- James Hershberg, George Washington University

Committee members absent from the meeting:

- Mitra Ebadolahi, American Civil Liberties Union
- Margaret Kwoka, University of Denver, Sturm College of Law
- Lynn Walsh, Society for Professional Journalists

Others present or participating in the meeting:

- David Ferriero, Archivist of the United StatesAmy Bennett, Designated Federal Officer, NARA
- Sheela Portonovo, OGIS, NARA
- Kirsten Mitchell, OGIS, NARA

Introduction and Announcements

Archivist of the United States David Ferriero offered opening remarks for the meeting. Mr. Ferriero explained the Committee's mission to look broadly at the challenges that agency FOIA programs will face in light of an ever-increasing volume of electronic records, and chart a course for how FOIA should operate in the future. He also thanked the Committee members for their work on these issues over the last two years, and commended them for approaching this work in the spirit of collaboration. He gave particular thanks to the Committee's six subcommittee co-chairs and added that he looks forward to reviewing the Committee's Final Report and Recommendations, and to working to implement them. He then presented each of the Committee members attending the meeting in person with a certificate of recognition.

Administration

Committee Chair Alina Semo asked Committee members on the phone and in the room to introduce themselves. After introductions, Ms. Semo explained how to provide feedback to the Committee, and where to find more information about its work. She also explained that NARA staff is monitoring the live feed, and that there would be time for public comments at the end of the meeting. She added that the Archivist has decided to renew the Committee's charter for an additional term and noted that the call for nominations was published in the Federal Register on February 16, 2018, with a deadline of June 1, 2018.

Ms. Semo directed the Committee's attention to the minutes for the January 16, 2018 meeting. She then briefly explained the Committee's voting procedures. The Committee voted to adopt the minutes.

Ms. Semo noted that the primary purpose of today's meeting is to discuss and finalize the Committee's Final Report and Recommendations and added that the draft report was circulated to the Committee and posted on the website about one week prior to today's meeting. Before

moving on to the day's business, Ms. Semo thanked the members of the Working Group that drafted the report – Michael Bell, Nate Jones, Chris Knox, Ginger McCall, and David Pritzker. Ms. Semo also noted that before the Committee could start its discussion of the Final Report and Recommendations, there was still one remaining recommendation from the Proactive Disclosure Subcommittee to discuss and vote on.

Proactive Disclosure Subcommittee Draft Recommendations, Discussion & Vote

Ms. Semo asked for any volunteers from the subcommittee to summarize the Committee's discussion and recommendation. In the absence of any volunteers, Ms. Semo asked DFO Amy Bennett to present the summary.

Ms. Bennett reminded the Committee that during its January 2018 meeting the Committee had decided to hold over a vote regarding a recommended best practice that agencies post all employee contact information. She explained that some of the Committee members had expressed privacy and security concerns with the practice and that Ms. McCall had volunteered to do additional research into how agencies currently treat disclosure of employee contact information. She said that Ms. McCall had shared her research with the subcommittee and that, after a great deal of discussion, the subcommittee had determined to recommend that a best practice be that agencies post an organizational chart and contact information for offices. Mr. Moulton clarified that he and other members of the subcommittee continue to encourage agencies to post all employee contact information. Mr. Pritzker then suggested that the draft Final Report and Recommendations be updated to note that the Committee is not making a recommendation regarding contact information *for individual employees*. The Committee agreed to the suggestion.

The Committee voted unanimously to move forward on the recommendation as a best practice. Ms. Pustay abstained from voting.

Discussion and Vote on Final Report and Recommendations

Ms. Semo explained that OGIS had compiled suggested edits from Committee members into one document. She explained that the Committee would discuss each suggestion and that Committee members could offer additional edits during the discussion. Ms. Bennett moved to the computer at the podium to make all agreed changes to the document. The document was projected on the large screen at the back of the stage. Ms. Bennett told the Committee that OGIS would update the page numbers in the Table of Contents and proofread the report before publishing the final version.

In reviewing the report, the Committee accepted edits intended to improve the clarity of the language and consistency, and to ensure that it accurately reflected the Committee's work and deliberations. The Committee also made the following substantive changes:

- In the Executive Summary:
 - Added a footnote explaining that Ms. Pustay abstained from voting on the entire report and all recommendations and best practices discussed by the Committee, and explaining Ms. Semo's abstention from voting on any recommendations that include references to OGIS and the Chief FOIA Officers Council.
 - Clarified that all of the Committee's recommendations are directed to the Archivist and when the report is referring to a recommended best practice.
 - Included reference to additional categories of information that the Committee recommends be proactively released as a best practice.
 - Rejected suggested edits that could be read as providing legal advice to agencies regarding treatment of documents that are not accessible to individuals with disabilities.
- In Recommendations:
 - Added explanatory text explaining the distinction between specific actions and best practices.
 - Added language noting that the Department of Justice Office of Information Policy (OIP) has collected information through Chief FOIA Officer Reports regarding agencies' search but that based on the subcommittee's findings, the Committee concluded that the information available is not comprehensive or uniform.
 - Modified language to make it clear that the Committee is not offering legal advice on meeting document accessibility requirements of the Rehabilitation Act.
 - Added a footnote noting that OIP has statutory responsibility to encourage compliance with FOIA, and issues government-wide guidance on a range of topics related to the best practices discussed in the report. The Committee rejected a suggestion to list particular OIP guidance in the footnote.
 - Clarified that as a best practice the Committee recommends that agencies consider creating rotational programs to expose "inexperienced or entry-level" employees to FOIA, rather than "young and newer" employees.

The Committee also noted that the explanations of benefits of the best practices are not parallel and asked OGIS staff to edit the bullet points appropriately before publishing the report.

The Committee voted unanimously to approve the Final Report and Recommendations. Ms. Pustay abstained from voting. Ms. Semo abstained from voting on any recommendations in the report that include references to OGIS and the Chief FOIA Officers Council.

Public Comment and Discussion

Kirsten Mitchell from the OGIS staff reported that there were no substantive comments on the livestream.¹ No other comments were offered from any of the audience participants.

Before adjourning, Ms. Semo asked Committee members to recommend any issues that they would like to see addressed during the next term. Nate Jones suggested that the Committee should get quarterly updates from requesters about their impressions with the process. Mr. Pritzker noted that the Committee has discussed the lack of action from the Office of Management and Budget (OMB) on the first Committee's recommendation and suggested that the Committee should monitor implementation of recommendations from both the first and second term. Mr. Jones added that based on the Congressional hearing last month, he understands that interested Members of Congress are continuing to encourage OMB to address the recommendation. Raynell Lazier suggested that the Committee might want to address the issue of/need for government-wide funding for FOIA offices.

Ms. Semo thanked the Committee for all of their work and added that OGIS will publish the final version of the report once all of the necessary edits are made and the report is proofread for typos. She then adjourned the meeting.

I certify that, to the best of my knowledge, the foregoing minutes are accurate and complete on June 4, 2018.



Amy Bennett
Designated Federal Officer, 2016-2018 Term



Alina M. Semo
Chair

¹ The only non-substantive comment observed during the webcast was a viewer asking – “thought no one cared about freedom of information in 2018. heh heh. kinda joking.”