

FOIA Advisory Committee Meeting

David Ferriero:

Good morning. I'm David Ferriero, the Archivist of the United States, and it's a pleasure to welcome you here this morning to the William G. McGowan Theater in the National Archives Building in Washington, D.C. Whether you're here in the theater or watching us on our YouTube channel, we're pleased that you could join us for the Freedom of Information Act Advisory Committee meeting. Today's is close to the halfway point of this committee's two-year term, and I welcome our committee members, and thank you for your efforts thus far. I appointed you in recognition of your expertise and the range of viewpoints that you bring to this work. As a member of this committee, you have a critical role in improving our understanding of the greatest challenges to the implementation of FOIA and collaboratively developing recommendations to address these challenges. The purpose of today's meeting is for the subcommittees to provide updates for the committee and the public on their work to date. This committee chose to address three important issues during their term: proactive disclosure, search, and efficiency in resources. These topics reflect the profound changes technology has made to the way government operates, and the public's expectations for openness. These are critical components to

charting a course for how FOIA should operate in the future. I look forward to reviewing your final report and recommendations.

Before I turn the program over to OGIS Director Alina Semo to begin today's meeting, I want to recognize her and her staff for providing this committee with leadership and administrative support. I would also like to thank today's guest speaker, Doug Hibbard from the Department of Justice, and to note that we are joined today by Jason Baron. Jason, most of you know, spent many years here at the National Archives as Director of Litigation, and is an expert on the preservation of electronic documents. I know -- I'll now turn the program over to Alina to begin today.

Alina Semo:

Good morning. Thank you all for joining us at today's meeting of the Federal FOIA Advisory Committee. As the Director of OGIS and this committee chair, it is my pleasure to welcome you all, and some of you again, to the National Archives and Records Administration in the McGowan Theater. This is our fourth quarterly meeting of the Committee's 2016-2018 term, if you can believe it, which means we're about halfway through, so we're doing great. As most of you know, and as the Archivist has already mentioned, the Committee brings together government and

nongovernment FOIA experts with vast and diverse experience to advise on and make recommendations to improve FOIA administration throughout the executive branch.

I first want to say, again, how much I very much appreciate all the work that all the committee members have been devoting thus far. The work on the subcommittees has been very diligent, and I'm very eager to hear about the reports today. And, again, OGIS looks very much forward to continuing to help support you. Our DFO, Amy Bennett, is here today, and she has been instrumental in moving things along, so thank you, Amy.

I'm going to go through some basic housekeeping rules in one minutes, review our general agenda, and set some expectations for today's meeting. First, though, we will spend a few minutes introducing the committee members participating in the meeting via telephone, and those who are sitting at the table today. We will begin with the members I understand are participating via telephone.

Amy Bennett:

(whispering) We might have a problem with the telephones.

Alina Semo:

We might have a problem with the telephones. There are three committee members -- actually, I apologize, four committee members who are expected to participate by telephone, when Amy tells me that they're able to listen in --

Amy Bennett:

To speak, yeah. (laughs)

Alina Semo:

-- but Nate Jones is supposed to be joining us by telephone, Margaret Kwoka, Jim Hershberg, and Raynell Lazier. I think that's right. And I'm not sure about Mitra. Hopefully she will come. So, whenever they're able to speak, we'll plug them in, but why don't we go ahead and introduce everyone at the table. I'll start with Ginger on my right. If you could just go around, please, and introduce yourself, and remind everyone of your profession and affiliation.

Ginger McCall:

Ginger McCall. I'm an attorney at the Department of Labor.

Chris Knox:

Chris Knox. I'm Managing Director of Discovery for Deloitte.

Sarah Kotler:

Sarah Kotler. I'm the FOIA officer at the FDA.

Lynn Walsh:

Lynn Walsh, National President of the Society of Professional Journalists.

James Valvo:

I'm James Valvo, counsel and Senior Policy Advisor, Cause of Action Institute.

Tom Susman:

Tom Susman, Director of Governmental Affairs for the American Bar Association.

Melanie Pustay:

Melanie Pustay, the Director of Office of Information Policy at Justice.

Michael Bekesha:

Michael Bekesha, an attorney at Judicial Watch.

Stephanie Carr:

Stephanie Carr, FOIA officer at the Office of the Secretary of Defense Joint Staff.

Jill Eggleston:

And I'm Jill Eggleston. I'm the FOIA officer for U.S. Citizenship and Immigration Services.

David Pritzker:

David Pritzker, Deputy General Counsel of the Administrative Conference of the United States.

Logan Perel:

Logan Perel. I'm an attorney at the Department of Treasury.

Sean Moulton:

Sean Moulton, open government program manager at the Project on Government Oversight.

Alina Semo:

Okay, thank you very much. I just want to remind everyone -- I was remiss in doing that last time -- when you do speak try to remember to identify yourself. So, it keeps -- helps us keep more accurate track of our meeting minutes, makes Amy's job a little bit easier. There will be a slight delay between the

time when we finally do hear the members on the phone speak -- (laughs) hopefully that will happen soon -- and when the microphones are turned back on, so just keep that in mind. This ensures that the livestream captures all the audio.

So, let me go into some administrative notes. This committee provides a forum for public discussion of FOIA issues, and offers members of the public the opportunity to weigh in regarding the administration of FOIA, and to provide ideas for improving the FOIA process. We do encourage the public to share their written comments and suggestions with the committee. Also, to learn more about the -- submitting public comments to the committee, please visit our current website at ogis.archives.gov. And, as I mentioned in our previous meeting at 9:00 a.m., we're actually switching to the NARA family website, so we'll be at archives.gov/ogis, but we will keep you posted on details.

At the end of the meeting we will have the opportunity for public comments, and we look forward to hearing from non-committee members who have thoughts or comments to share. And we are very pleased to see so many of you with an interest in FOIA here today in the McGowan Theater, and we welcome your feedback.

To promote openness, transparency, and public engagement, we post committee updates and information to our website, our blog, and on Twitter, @foia_ombuds. The URLs to the sites are on the slides -- the slide behind me, supposedly. Yes, they are.

(laughter) Stay up to date on the latest OGIS and FOIA Advisory Committee news, activities, and events by following us on Twitter. We're trying to improve our Twitter followers, so please join us. Information about the committee, including members' biographies, committee documents, and public comments, are also available on the OGIS website.

As I mentioned earlier, we are livestreaming this meeting. We will make the video, transcript, and meeting materials available on the committee's webpage as soon as possible. If you could bear with us, we will try to have it up within approximately 30 days, and we thank you in advance for your patience and understanding.

We do plan to take a 15-minute break halfway through our meeting, at approximately 11:45 a.m. Last time I seem to have run a very efficient meeting, so we were ahead of schedule. My hope is perhaps we could do the same today. During the break, you may wish to purchase food or drink from the Charters Café,

which I hope is going to be open, located on this level. As a reminder, there is no food or drink allowed in the theater. And please note there are restrooms directly outside of the theater, and another set downstairs near the café.

Okay, so I want to move on to approval of our January 26, 2017 meeting minutes. I want to turn our attention to that. And I am advised that the committee members have all had a chance to review them, and all comments have been received and incorporated. I have certified the minutes. So, I will now entertain a motion to approve the minutes.

Melanie Pustay:

So moved.

Alina Semo:

Do we have a second?

Tom Susman:

Second.

Alina Semo:

Thank you. All in favor?

All:

Aye.

Alina Semo:

All opposed. (pause) The minutes have been approved and will be available for public inspection on the committee's website.

Thank you. So, I'm excited to hear from each of the committee's three subcommittees today: proactive disclosure, searches, and efficiencies and resources. As we move through today's discussion, just a reminder, it's never too late to sign up for another subcommittee, just as a reminder to the committee members. (laughter) They'll still welcome you with open arms. We will have one presentation today from Doug Hibbard from the Department of Justice Office of Information Policy, and then we will open up the floor to discussion after each subcommittee presentation to committee members.

So, our first item on the agenda is an update from the proactive disclosures and accessibility subcommittee. I want to turn the meeting over now to co-chairs Sarah Kotler and Margaret Kwoka, who is supposed to be on the telephone, to provide us with any updates, and tell us about your activities, and lead any discussion.

Sarah Kotler:

Sure. Thank you.

Alina Semo:

Thank you.

Sarah Kotler:

This is Sarah Kotler from the FDA. Since it seems that Margaret's not available, I will step in and give that update that she was planning to give. The group has been busy, as I think we described at our last meeting. Our plan was to talk with FOIA officers at a handful of agencies of different size and different types of FOIA requests to see what those agencies were doing, along the lines of proactive posting, and we have already made a lot of progress in those discussions. We have talked already with several of those agencies. In a few other cases, we have appointments set up, but we weren't able to complete them in time for this meeting, and there may be one or two where we'll still trying to come up with a time to meet with those groups. The conversations have been very enlightening, and we've covered a lot, including things like compliance with Section 508, the Americans with Disabilities Act, how these agencies are using technology, how these agencies are determining what should or should not be proactively posted. At

this time, since our discussions aren't complete and we still have some meetings left to hold and some agencies to reach out to, we're not in a position to give any conclusions at this point, but perhaps by the time of our next meeting all of those meetings should certainly be complete, and we can give a more detailed update at that time.

Alina Semo:

Okay. I'm just checking in. Amy, no one on the telephone? They can hear us? They can't hear us. Okay, I just wondered if --

Amy Bennett:

I think they're watching the livestream right now.

Alina Semo:

Okay, so --

Sarah Kotler:

Well, then Margaret can't say I said anything wrong. (laughter)

Alina Semo:

Right, that's what I was thinking, as well. I -- is there anything that you think she might've also added that you didn't include in your report?

Sarah Kotler:

Not that I can think of, but there are other subcommittee members here, so if any of them wants to chime in I am more than happy to be reminded of anything I may have forgotten.

Alina Semo:

Sean, thank you.

Sean Moulton:

So, this is Sean Moulton; I'm on the subcommittee. The one thing I would say, and I don't want to draw a conclusion from it -- as Sarah's saying, you know, we want to talk to more agencies -- but I think one of the -- certainly one of the more interesting things we have heard from some of the agencies when it comes to 508 compliance and the potential tension that it poses for robust proactive disclosure, is that some agencies have simply sidestepped 508 compliance and created more of a waiver process by which they're able to then be very proactive in posting materials with instructions and understanding that if someone needs a 508-compliant version of any of the documents

they're posting through that process, then they would make that available as soon as possible. Now, obviously, this -- the rest of the agency materials, they were very clear, are 508 compliant; it's just the volume of materials being made available through this proactive disclosure under FOIA are being given basically a waiver.

Alina Semo:

Okay, thank you. Any other comments from any of the rest of the committee members? Questions? Thoughts?

Michael Bekesha:

How many agencies total are you going to be meeting with?

Sarah Kotler:

Is it about six?

Sean Moulton:

Yes.

Sarah Kotler:

Yes.

Sean Moulton:

And I believe we've talked with three so far.

Sarah Kotler:

Yes.

Michael Bekesha:

Are you going to identify the agencies at the end of the process?

Sarah Kotler:

Sure.

Sean Moulton:

My expectation, yeah.

Ginger McCall:

This is Ginger. I may have missed this, but how did you select the particular agencies? What were the criteria?

Sarah Kotler:

This is Sarah. I actually think that, in part, that might've been done before I joined the committee, (laughter) so I am not entirely sure. I think it was in part due to size and complexity and breadth of different types of requests, but I

think it also might have been, to some extent, more practically where we knew we had good contacts and could more easily get the information that we needed.

Sean Moulton:

As well -- this is Sean -- as well, agencies we knew had at least a reputation anecdotally of doing something proactive and interesting, so we -- I'm trying to come up with a whole list in my head right now; I don't have it in front of me, but EPA, Department of Homeland Security --

Sarah Kotler:

State Department.

Sean Moulton:

-- State Department were three that we're working on. And so those are the kinds of agencies, and we did try and, as Sarah said, mix it up in terms of size. SEC and NARA, thank you. So...

Tom Susman:

Yeah, this is Tom Susman. I'd like to -- his -- though I usually agree with Sean, I think his characterization of some agencies as sidestepping the compliance requirements is really -

- kind of misses the mark, because they are complying with the requirement for accessibility when not unreasonably burdensome, and looking for -- and achieving alternatives, like posting materials and indicating that, on request, we will make information available in accessible format, or delaying the accessible but getting the non-accessible form up quickly, and things of that sort, which seem to me to be all variations on the compliance thing. And that's what I think the subcommittee is really quite keen to look at is, you know, how to get the information out there. Agencies are telling us that they see a tension, sometimes a conflict, between 508 and FOIA, and so I think that's one of the things we're trying to do is see if we can come up with a, you know, some conclusions that will allow the information to be put out there.

Sarah Kotler:

Thank you, Tom. I think that -- I agree that -- 100% -- that I think that there are perfectly valid waiver mechanisms that agencies can use that allow them to comply with both statutes, and that could very well be useful for a lot of agencies who aren't sure how they can best navigate the two, and I do see that being a significant part of the recommendations in a way that agencies can, in the most -- in a completely legal way, comply with both.

Sean Moulton:

So -- this is Sean -- I will amend my (laughter) original comment to say that they are sidestepping the technical process of making each document accessible and compliant, and not sidestepping compliance, because they do, they have a waiver process. But they basically put off the processing of the documents until such time as they feel they are necessary, based on requests.

Lynn Walsh:

Lynn Walsh, with the Society of Professional Journalists. Just curious: have -- do you have set questions that you're asking these individuals, or is it more of a conversation?

Sarah Kotler:

It's both. There are set questions, but then we're taking the conversations where they -- where they lead. And I have -- let me say, I haven't been involved in every one of the conversations, but that's how the... Because not everyone on the subcommittee is on all of these conversations, maybe three people for each one or so. So yes, there are set subjects.

Alina Semo:

Anyone else? Going once, going twice. Okay, thank you very much. Really appreciate that. Thank you for covering for Margaret. Margaret, I'm sorry if you can hear us but you can't speak. (laughter) So I apologize, but I guess we're ready to move on and go on to the subcommittee on searches. They can talk now? Oh, excellent. We just got excellent news. So those on the phone, can you hear me?

Amy Bennett:

There is a delay.

Alina Semo:

There is a delay.

Amy Bennett:

So, you might want to...

Nate Jones:

Yeah.

Alina Semo:

Okay, and I'm just going to rewind and ask you to please introduce yourselves and your affiliation.

Nate Jones:

Nate Jones, National Security Archive.

James Hershberg:

James Hersh--

Margaret Kwoka:

Margaret Kwok... Sorry.

James Hershberg:

Sorry, go ahead.

Margaret Kwoka:

Margaret Kwoka, University of Denver.

James Hershberg:

James Hershberg, George Washington University.

Beverly Earlier:

Beverly Early, captioner.

Alina Semo:

Is there anyone else that's on? Oh, and I think Mitra just joined us.

Mitra Ebadolahi:

I did. Hi.

Alina Semo:

Can you introduce yourself?

Mitra Ebadolahi:

Sure. This is Mitra Ebadolahi -- is this on? -- from the American Civil Liberties Union. Hi.

Alina Semo:

Margaret, since you're now on the phone and we can hear you, is there anything you'd like to add to the great report that Sarah provided us today? (laughter) Anything -- any other thoughts?

Margaret Kwoka:

No. Sarah, thanks so much for jumping in, and sorry that I was unable to hear you and you were unable to hear me. I'll just -- I'll say -- I'll just confirm -- I think this got out there, but the list of agencies we decided to speak with are State, SEC, EPA, NARA, and DHS, and that Sarah's absolutely right, that although she may not have been involved in that first conversation where we talked about these agencies, they were

largely identified because we were looking for a breadth of type of work or types of records that would be at issue, and also, you know, instances in which we had some sort of anecdotal reason to believe that these agencies were engaged in kind of creative and forward-thinking, proactive disclosure policies.

The two conversations that are fully complete are SEC and DHS, and the others are in various forms of back-and-forth and setting up. But I'll say that, at least from my perspective, I was -- I walked away from each of those conversations being quite impressed in terms of initiatives that these agencies were engaged in toward proactive disclosure. It certainly is true that at both agencies release to one/release to all is one major component of the proactive disclosure initiatives, and something that's taking quite a bit of resources, but both agencies also indicated their responsiveness to current events and current topics of interest as a way to decide when to invest in proactive disclosure. Both agencies, you know, were very frank about the fact that, you know, it's largely the same staff that are working on proactive disclosures as responding to requests, so there is a resource tradeoff. And, as has already been mentioned, you know, each agency had a different way of accommodating the difficulty of 508 compliance by invoking, you know, legal waivers and exceptions where needed, sometimes for a

period of time, sometimes upon request, as mentioned before. So, I thought, actually, there was quite a bit of interesting consistency out of the two conversations we've already finished, and we're looking forward to the rest of these conversations for sure.

We do have a set template for the kinds of questions we are asking, so I can speak to that a little bit, although, of course, Sarah's absolutely right that, you know, we're engaged in lots of follow-up and kind of taking the conversation where it goes. But our questions fall into kind of the following big categories. One is exploring what kinds of proactive disclosure initiatives the agency has engaged in, what their goals for proactive disclosure are. So, for example, is the goal to reduce the need to make FOIA requests, or reduce their volume of FOIA requests, or is it some other goal that they have in mind? And, interestingly, actually, it's so far that these two agencies, while they've had the former goal in mind a bit, have not -- have actually had other goals in mind, as well.

We've talked about whether they focus on certain categories of records over others in terms of newly created records or historical records. We've talked about whether they're analyzing their FOIA logs for categories of records that might

be good targets for proactive disclosure. We've talked about what staff are involved in proactive disclosure, and what kinds of barriers or hurdles that they may have encountered when trying to engage in these initiatives. And then we've had in-depth conversations about 508 compliance, so the processes they use to make documents compliant, when it is they determine they can post a document that has not been remediated, and under what circumstances they'll invoke a waiver like that, what personnel are involved in that process, and so, you know, looking from the agency's perspective at how the -- how that process works, and then, you know, any experiences that they've had, you know, kind of trying to balance the two statutes' legal requirements. So those are our kind of major categories of questions that we're looking at.

We're also -- I mean, coming out of this, as has been mentioned, we're really hoping we'll be able to make a set of recommendations about best practices in terms of agencies, when the agencies can, compliant with both statutes, post records that have not yet been remediated, either because they're in a remediation pipeline or because there's some other waiver, and when it is they need to remediate before records are posted. So, we are hoping to really dig into that threshold issue and come up with concrete recommendations for agencies based on what

we're learning in these conversations, and our own research, as well.

And then the other thing I wanted to mention is that we've had discussions as a committee with the National Archives now about how our subcommittee can maybe kick off some sort of effort to bring together various stakeholders in the 508 process to discuss how the current technical process of remediation is working, and perhaps to try to figure out how we might be able to spur the development of some sort of open source technology that might help lower the burden of remediation. So, in those instances where agencies decide they need to or they want to remediate documents before they're posted, trying to lower the burden of that for agencies. So, we're in very initial conversations about how this subcommittee might go toward that effort, but I think both pieces of 508, both when records need to be remediated and then also if they're going to be remediated how to lower that burden are on our radar right now.

Alina Semo:

Okay. Margaret, thank you very much for all of that. I want to give other folks on the phone the opportunity to ask any additional questions or make any comments about all the great work the subcommittee is doing.

Jim Hershberg:

I would just add -- this is Jim Hershberg -- that I still think we need to reaffirm the principle that I know Nate shares, that 508 compliance should not be an obstacle to release information, and in cases where the original documentation, especially older documentation, handwritten documentation, things like that, are difficult to make 508 compliance, this should not be an excuse not to release material. And the option of remediation on request, which was mentioned in one of the interviews, is also something that should be in consideration, or at least upon request while further remediation is being investigated is also an option. But the key principle is that 508 should not be a barrier to release of material.

Alina Semo:

Thank you, Jim. I appreciate that. Anyone else on the phone? Or anyone else on our committee have any other reactions or questions or comments? Okay. So, we're ready to move on to our second subcommittee report on searches. I believe Logan is going to be taking the lead, since Nate is on the phone, but at least can speak now, which is great. But before I actually turn to you, I was going to give Melanie Pustay the opportunity to introduce our guest speaker today. He is going to be providing

us a presentation that I know is of great interest to this particular subcommittee. So, Melanie, take it away.

Melanie Pustay:

I'm obviously very delighted to introduce Doug Hibbard, who's coming down the stairs now. He's a senior advisor on the initial request staff at Office of Information Policy, so responsible for processing -- reviewing the processing of FOIA requests that are made to the senior leadership offices to the Department of Justice, so the Offices of the Attorney General, Deputy Attorney General, so oftentimes very high profile, voluminous, multi-dimensional FOIA requests. And Doug's been with our office since 2001. Of course, I can remember when he first came in as an analyst. And he has really seen firsthand the transformation of FOIA from a very paper-oriented process to one where we have emails that we had first processed in paper form, and Doug has really been on the forefront of bringing us forward into the modern age, and utilizing discovery tools to have technology help us with processing. And so he's, I think, going to be a really great presenter today for how that process works. (pause) And without further ado, here's Doug.

(applause)

Alina Semo:

He's a little shy initially, but he's coming up now.

Melanie Pustay:

Yeah, here he --

Doug Hibbard:

Oh, no, no, just trying to get logistics. So, thank you. Thank you, Melanie, for that, and thank you for the committee for inviting me. Many of you I know by name -- Mr. Bekesha; Ginger, we've talked before, you might remember -- and so it's an honor to be here and to speak on this subject of e-discovery and how it can change things. And like Melanie says, I've been doing this for 15 years now, and a lot has changed in that time. One thing that's changed a lot is I'm no longer doing my redactions with a marker (laughter) and my photocopier, but this is how it started. This was my technology. We're receiving more and more requests. Over the last ten years, the Department of Justice has seen its incoming go up 40%. Our office, OIP, in the same time has gone up 75%. So, it's more requests, and the requests are more complex. Speaking in general terms, when I started, sometimes a search would just consist of taking a request, going down to where the paper was, various offices, and said, "All right, I got a request. Who has paper on this?" And then photocopying that paper, carrying it back to my office, and then

using my little friend (holds up marker) to go to town on it.

(laughter) And that was the process for some requests.

But requests are becoming more and more complex. Requesters are asking for things in native format. They're asking for texts. they're asking for tweets. They're asking for records in complex computer systems and databases that someone would need a degree in computer science to understand, and I don't have a degree in computer science, and so I have to figure out what this is meaning, what this means. I mean, I heard someone earlier talk about Capstone. I had not heard about Capstone until we got a request on Capstone, and I went to Melanie and said, "What is this?" (laughter) And so -- and then, of course, what we see is people making requests for email about all of this. And when I look at requests -- and really, the dividing line I see, the simple dividing line between a request that might have 50 potentially responsive documents and one that might have 50,000, really that line comes down to email, because that's what can take a small request and blow it up into a voluminous request quickly: whether or not the requester wants email. And so, this is where we can have e-discovery tools to help us out in conducting our search and in working with the requesters on these records, because there is no exemption for

email. Been pushing for it, no exemption [ten?] yet.

(laughter) That's a joke.

And so with these e-discovery tools, what I can do is conduct one search across multiple custodians, using one set of terms and one set timeframe, and have my tech folks go and search across their email and various computer files they have, and locate everything that hits on those terms and that timeframe, and load it into a database, a database that is still electronic, that allows me to do further searching against it, that allows me to filter via domain or custodian, or to look for an exact phrase within there, or to look for anything that went outside of -- went to a dot-com domain as opposed to a dot-gov domain. And most importantly, it allows me to negotiate with the requester. It allows me to get on the phone and say, "Your request involves 50,000 emails. You have asked for, quote, 'all records' on, let's say, Guantanamo Bay." And requesters generally ask for "all records," and I completely understand why: they don't want to miss anything. That doesn't necessarily mean they really want "all records," and I think some of you would agree with that, but you want to catch everything.

And so, this is where we can use our tools to reach out to the requester and say, "All right, I've done a search. I have

50,000 documents, but I can tell you right here and now that 30,000 of them are nothing more than news articles. Do you want those?" Many requesters will say, "No, that's not what I'm after." Okay. Well, right then and there we've chopped off 60% of the records we've found. And then we can talk further, and in real time talk to the requester and say, "So what are you looking for? Guantanamo Bay, we got that far, but do you want records on a specific detainee? Do you want records on health issues there? Do you want records on the closure of Gitmo? What are you looking for?" "Well, I want records on this one detainee." Great. In real time, I can plug in a search in my database and see how many hits I have on that name, and I can tell the requester, "All right, that's a thousand emails. We started with 50,000; I'm down to a thousand. Is this what you're looking for?" And then we can come to an agreement that yes, that's what I want you to process. Now, that "all records" has gotten from 50,000 down to 1,000, and really, it doesn't take much more time than it took me to describe how it works. It's just a matter of getting on the phone and talking to the requester and explaining the process and what we can do with them.

And that's the real thing we can do with this e-discovery stuff, this e-discovery tools. And I want to be -- but I want to be

clear on this: it is a tool. It is not a solution. This material does not process the records for you. If you get your 50,000 reque-- 50,000 documents down to 1,000, then the agency still has a thousand documents to go through. There is no e-discovery software I know that processes anything. This is where it takes the agency expertise to step in, the agency analyst to do their job applying an access statute to the records, and determining what can and cannot be disclosed. But using the e-discovery tool gets us to that part of the request, that part of the process much sooner, because we're getting to exactly the heart of what the requester is looking for.

Now, there are other limitations with e-discovery tools. First, that initial pull of records, getting the -- searching the dozens or hundreds of custodians, and getting that -- those records into the database does take itself time. It's not instantaneous. I've seen some that have been able to do overnight, if they're small and very focused. I've seen others that have taken weeks. That simply is built into the process. Now, that said, it is still a far faster process than what it used to be, which would have been me going down to everyone's computer, sitting there, and searching their email while they were off at another meeting. And so, doing that for, say, 12, 15, 100 custodians is not very quick. It takes time. But the

e-discovery tool lets me do it very quickly. The e-discovery tools, they don't de-duplicate the way I would like them to. They do organize the records. They do put them together, and it's easier to identify duplicates, but what I feel is a duplicate, it does not. Sometimes, it does have false hits. By that I mean it will see the Department of Justice icon, logo, or that little Twitter bird and think that's a distinct record. It's not, it just sees the picture and thinks that's a record, and counts it as one, but it's not. And it does not handle classified material. For that, I still have my little friend here. (holds up marker)

But what this all comes down to is -- like Melanie said, I've been doing this for 15 years now, and the one thing I know for certain is that this process, this process of submitting FOIA requests and fulfilling FOIA requests, works best when it is a symbiotic relationship between the requester and the agency, when we're working together towards fulfilling requests, when I can reach out to you by phone, by email, and basically say, "Help me help you. Tell me what you want. Tell me what you don't want. And with these tools, I can much more quickly identify and give you a volume of if you ask for this, the volume is that. If you ask for Y, the volume is this." Working together so that we can work together to fulfill these requests.

Because one thing I'm sure we can all agree on is that the requests are not going to stop coming in anytime soon. You're not going to stop submitting them; we're not going to stop getting them. And so, we are going to struggle to process the requests of today if we are continuing to use the procedures, techniques, and tools (holds up marker) of 15 years ago. And with that, I open your questions.

Jill Eggleston:

Jill Eggleston. Doug, I'd be interested in knowing at what point in time do you have that conversation with the requester. Is it when the request comes in, or is it after you've done some kind of preliminary search and have an idea about what the volume is?

Doug Hibbard:

It could be both. We would definitely reach out to requesters. I've called requesters five minutes after they submitted it, and just want to talk about it. It's because I can tell where this is going. I can tell that I'm going to find a lot of what we call Attorney General news clips. They're just collections of news articles every day that the Department of Justice compiles and distributes. Sometimes they're a hundred pages each. Most requesters don't want that, and they'll be willing just to say

immediately, "Yes, I don't want that." But in terms of the e-discovery tool, once we have the data, then we'll start looking at it, and maybe we only pulled eight documents. Okay, that's not hard. But if we have 20, 30, 50,000, that's when we're going to take a preliminary view of those documents, see what's in that pull, and then start identifying categories that maybe the requester doesn't want, and then call them up and say, "I've identified these categories. Do you want news clips? Do you want records about, 'Hey, can you do the meeting at 10:00?' 'No, not 10:00.' 'What about 10:30?' '10:30 works for me.' 'Okay, but I can't do that.' 'What about Wednesday?' Stuff like that."

We've also had success in talking to requesters and say, "If we provide you with the final -- what we find in our records, our e-discovery records, are a lot of drafts of a letter. If we provide you with the final version of that, do you want all the emails that led up to it?" Some requesters are willing to say, "No, as long you give me the final, I don't care how it got made." Some requesters go, "Yes, that is information I'm interested in." But that gives us categories to reach out to them and say, "Do you want this?" And give them the option to say yea or nay.

Jill Eggleston:

One other question. So, do you use the tool primarily on emails, or do you have a large portion of electronic records that are not emails?

Doug Hibbard:

It's largely emails, but it will also search shared drives, so our shared drives. It will not search -- we do have a separate official records depository database. It doesn't search that, but that is something that we already have access to and we can search immediately upon receipt of request. So that was never an issue. That's always been something we've been able to search (snaps) like that. It's faster than the e-discovery tool in terms of finding that official correspondence. And that's something we sometimes offer up to a requester. I could search this one database of official correspondence, find these records today, and probably get a response to you within the statutory time limit. If you want email, whether or not I can meet the statutory time limit is, eh, it's going to be pushing it, and probably not, because of the time it takes to do this searching, and then the volume of records I might come across. And so, we offer that as sort of option A, option B. Which way do you want to go, requester?

Jill Eggleston:

Thank you.

David Pritzker:

This is David Pritzker. You have described what sounds to me like a very sensible way of processing a request that could be huge to find out exactly what it is that this requester wants. My question is: how does -- how do you apply the principle of release to one is release to all? Do you simply post on a website or elsewhere precisely what has been filtered out to respond to this requester so that someone else who sees this and has an interest in the same area will know precisely what he or she is getting? Or do you document in some way what the search was so that if someone else has a related question, related request, but not exactly the same interest, you don't have to go through the same process again?

Doug Hibbard:

Yeah, I'm going to actually pass that along to Melanie.

Melanie Pustay:

Yeah, you're -- it's really sort of two separate things, David, the... So, release to one/release to all is designed to post -- to proactively make available to everyone the final documents

that have been processed for release, so they're necessarily going to be -- it's dependent on what each requester asked for. But our hope with the concept of release to one/release to all is that the more documents that are out there that are already FOIA processed that, for some people at least, they'll be able to say, "This is perfect. Here's three sets of documents already processed. I don't need to make a request. I've got them instantaneously." So, the big advantage, of course, is that there they are, sitting on the website. To the extent that requesters look at those three sets of documents and go, "Well, actually, I see it's really the -- this is on Gitmo, but it's on one detainee, and I really wanted things about Gitmo closure," well, then they'll make a request. And then -- but then over time, of course, well, you know, you -- our hope with this whole -- the concept is that over time you start building and building a repository of things that have been processed.

David Pritzker:

So, does that mean that there's no effort to accompany the material that's being released by any statement of exactly what it is, how -- why this group was selected?

Melanie Pustay:

Yeah. So, I mean, the -- at this point, of course, it's -- would be -- it's very much up to how much time the agency wants to put to creating or accompanying explanatory material to the posting. We just heard from the proactive disclosure committee. We're already so challenged. We have a lot of challenges with posting, because it's -- and it's obviously so -- it's frustrating to all of us, that we want to get things up on the website, especially when they've already been FOIA processed, but we have legal obligations that we have to comply with, in addition to FOIA. And then also the more time you spend creating material to accompany a proactive disclosure, then we have to worry about resources being diverted to that and away from FOIA requests. So, my short answer to that is that at this point I would say to agencies they're free to put as much or as little explanatory information as they want. Certainly, a general -- we would want some minimal level of description so that it's helpful to somebody looking at the website.

This also -- there's just so many points to this. I'll just make one last point. (laughs) This -- the kind of the searchability and -- of proactively disclosed records is also tied into -- oh, I'm... I'll -- I was -- I'm going to ruin my own surprise announcement. Okay, so I won't say anything for...

(laughter) Okay. I'll wait. There's a teaser. I'll fill -- I'll finish that sentence at the end of the meeting.

Tom Susman:

Let me ask a variation on David's question. Tom Susman. To what extent do you disclose to the requester the keywords, search parameters, formulas, algorithms, things of that sort that you use in your e-discovery? And I guess for some of us requesters who may not be tech savvy, do you talk to our e-discovery experts to -- or will you talk to ours on the other side for a sophisticated requester so they understand what you're doing? Because, obviously, if you use the wrong synonym you could miss something, depending on the sophistication of your software. So, I mean, I'm just wondering how transparent is that process?

Doug Hibbard:

Yeah, well, the initial pull, generally, when we submit it to our tech people to have them search, we'll come up with terms ourselves, generally, and we'll do that based off our knowledge of the records. But if I'm then talking to a requester and they ask me, "What term did you use?", I'm more than willing to tell them how I found these records, because basically if the request were to go on to litigation I'd have to attest to those terms

anyway. I can't hide that, so why would I not tell you? And then, of course, like I said, when I have a requester on the phone, really it's sort of like you give me the term, and I'll run it, and I'll see what pops up, and we can just keep throwing terms at it until we start getting to what you want. And so, really, that's the relationship, the conversation we're having back and forth. So yeah, I do my initial pull, I find records, and generally when we do this initial pull we will go broad to make sure that we try to catch as much as possible, so knowing that we can do this secondary searching, knowing we can call you and discuss it further and drill it down to more terms that are really what you want. And so that's a conversation we'll make very transparent, you know, because we want you to understand the process, and we want to work with you to get to the records you want so that we're not spending our resources processing records you don't want.

Tom Susman:

And can I ask Melanie: to what extent is this process, which seems to be sophisticated and open and interactive, something that you are pushing out to all agencies?

Melanie Pustay:

Yeah, we absolutely encourage this for all agencies, and it's part of, like, our best -- we've had best practices on this, and it's -- as Doug said, it's the collaboration is just really, really helpful, and also, obviously, having the tools in the first instance is a big part of it. The other thing is, though, it's, I think, the great... It always -- a lot of times these issues come down to the greater understanding there is between the requester and the agency. It just makes the process go more smoothly. They understand sort of what the agency has, what it's found, and it just makes it better.

Chris Knox:

Hi, Doug. This is Chris Knox. Thank you for the presentation on search. I'd like to add that if you think about what these tools are used for, they're used for litigation support, and the discovery process, and that workflow is almost exactly the same as the FOIA workflow: there's an opposing party that makes the request, which you have to go and search for all correspondence from this date to this date with these topics, which is where the search comes in. But you mentioned that agency personnel need to look at all thousand of those emails that came out, which is absolutely correct, but these tools can also amplify those personnel in highlighting specific content in there that they need to take a look at, potentially predicting the PII, PHI

type information that's in there. If you see three numbers dash two numbers dash four numbers, it will highlight that and say, "This is potentially a Social Security Number." So yes, agency personnel need to look at every thousand of those emails, but they can do it in such a way that they can do it much faster than they were able to do it previously. The tools are starting to learn that -- the makers of the tools are starting to learn that the FOIA market looks a lot like the litigation discovery market, and they're starting to put FOIA workflows into the tools. The market just hasn't caught up yet.

Doug Hibbard:

Yeah, and that's actually how we learned about e-discovery. We learned about it from our civil discovery -- our civil division. They said, "Hey, we got this tool," and they described it to us. And they said, "Well, that sounds pretty much like a FOIA search." And yes, it's not -- it wasn't built for FOIA, but you just change the interface some and it works. It does what we need it to do. And yes, it will identify PII. It will help -- and redact it. It will help identify if we have, like, an email address that we need to redact, we can say, "Redact this every time you see it," and it will catch that kind of stuff. But yeah, getting to the substantive of the context of the email, that's where agency personnel earn their pay.

Chris Knox:

Absolutely. If you think about it, attorneys use the tools to look for privileged information, which is much like the exemptions that take a subject matter expert to actually review it, but it's the -- it's the grouping by content that speeds that process up --

Doug Hibbard:

Yes.

Chris Knox:

-- considerably.

Stephanie Carr:

Hi. Stephanie Carr. Thanks, Doug. I just have a pretty basic question. I'm just wondering how it really works. Is it a tool that's on the desktops of all of the action officers, or...?

Doug Hibbard:

It's web-based. It's web-based for ours. And so, I -- basically, we get a request comes in the door, I fill out a form with the custodians and the terms I want used and the date frame, date length, and I give it to my tech people, they go

off, do their magic -- I don't know what; it happens -- and then at some point later they say, "All right, everything that you wanted is in the database." And then I just go on to the webpage, basically, which I can access -- well, I brought my laptop with me -- if there's wi-fi in here, I could access it right now. I'm not going to do that, but I could do that. And it's all right there on the web, on my webpage. And then I go through the records and take it from there. But no, the only thing that had to be installed, per se, on my computer is a viewer. That was just a matter so I could see the records and apply redactions to them if I wanted to. But that was a viewer.

Michael Bekesha:

Michael Bekesha from Judicial Watch. So, what's the cost?

Doug Hibbard:

That I don't know, because, like I said, we first learned about this from our Civil Discovery, and then we learned about it also from our Justice Management Division, who is basically our administrative arm of the Department of Justice, and they said, "Well, we have a similar thing that we have procured as an enterprise solution, and so I don't know what the cost is." Thankfully, that was not something we were deeply involved in. We were able to work with them in terms of using it. And so, it

was not something we went -- we, OIP, actively went out and procured.

Ginger McCall:

Is that -- this is Ginger -- is that an answer, Melanie or Doug, that you think that you could come up with and report back to the committee on?

Doug Hibbard:

I could certainly reach out and see how much JMD spent to get that one system in, probably ask Civil how much did they spend on theirs, too.

Melanie Pustay:

Well... Yeah, sure.

Ginger McCall:

Great, thank you.

Chris Knox:

Can I add to that? Because it's possible, if you reach out to your legal folks, it's possible they already have the tool in house, that you can leverage it.

Doug Hibbard:

Yeah, that was the thing: we didn't even know it existed, but it was already in house. We had it. We just didn't know we had it.

Lynn Walsh:

Lynn Walsh, the Society of Professional Journalists, and this may be more a question for Melanie or the committee, but are we aware of any agencies that maybe do not have this capability currently, or have it and are not using it?

Melanie Pustay:

I -- we've asked -- we've asked agencies to report on the different tools and in chief FOIA officer reports for kind of the last several years we've been asking agencies to give reports on what tools they have, challenges to getting tools, that kind of thing. So definitely that's where we could look to actually, like, sort of get a breakdown. Anyone could look, and obviously, the search committee could -- that would be a really good place for data from all hundred -- I think we're up to 119 agencies now subject to the FOIA -- to see what agencies have -- what agencies are using the tools, and what challenges they have. Definitely some agencies report that they don't have these more sophisticated tools. We do have a decent amount of

agencies, though, that get, you know, less than 100 requests a year, and they're probably the agencies that don't do much litigation, so it probably doesn't make a whole lot of sense for them. I mean, we're talking, you know -- obviously at the Justice Department we have seventy-- over 70,000 requests every year, so it is an easy case to make for DOJ to have it. So obviously, there's going to be those different factors, as well.

Logan Perel:

And this is Logan. Just to follow up on that, we had discussed at the subcommittee doing -- looking at the feasibility of doing a data call to all the agencies through the chief FOIA officer's counsel or some other mechanism to get that data, because we couldn't find it, and we don't know that it exists elsewhere.

Melanie Pustay:

We're in the -- we're in the -- we'll be starting shortly -- I'll put it that way -- our process of putting together our questions for the chief FOIA officer report for next year, and I'm looking -- and we usually have a preview of our assessment from the year before and invite people to come in and give us suggestions for things they'd like us to ask in the chief FOIA officer reports for next year. So, I flagged that for people. We'll make a note of this as another area for questions under

our technology section. We always ask questions about technology, and we can ask more targeted questions on this. So, we'll be happy to hear from -- hear suggestions for things you'd like in that report.

Sean Moulton:

Just one other question. This is Sean Moulton with POGO. Has there been any tensions or difficulties with the program staff in terms of concerns about privacy and allowing -- I know that's one of the things we've heard is that program staff aren't comfortable with allowing FOIA officers or other parts of the agency to simply be able to kind of do a call on their emails and see what they're -- what -- they want to be the ones who are the custodians and the gatekeeper to their emails. Has that been an issue?

Melanie Pustay:

It certainly was -- it's certainly been something that was raised, and it's -- and obviously, we -- you have to be very careful, and FOIA officers are very mindful of their responsibility to safeguard information, and clearly, you're looking at things that are sensitive on many different levels. So, it -- I wouldn't be surprised that that would be an issue that was raised, but we have managed to -- because I think we

have such a longstanding relationship with these officials and these offices, we have worked it that we -- that's how we do it. And ultimately -- I mean, sort of the selling point for it is that it's so much more efficient, obviously. And I think we talked about this last meeting, that to the greater extent you can have searches in the control of the FOIA officials, because it's our job to do it, as opposed to tasking it out to someone else to have to do who has 20 other things to do, it's much more efficient, and it does take one thing off their plate. But they have to feel very, very comfortable that you're going to be -- treat that material very carefully, and that you have procedures to do that. But so, we've been fine -- we've been able to do it, and I think -- I think lots of agencies are, but it's not an unreasonable concern. So, it's just a matter of sort of working it to give people comfort.

Chris Knox:

Okay, this is Chris Knox. Can I add one more thing?

Melanie Pustay:

Yeah, sure.

Chris Knox:

For those agencies that are migrating to the cloud, or have already migrated to the cloud, a lot of the tools, a lot of the cloud hosting email providers actually incorporate these tools in the platform itself, so you should -- you should also look into that.

Logan Perel:

This is Logan. I have a quick follow-up for Doug. And my question was whether there's any consultation with the subject matter experts when the request comes in at your agency, because, you know, there might be a list of keywords you and the requester come up with that may not capture what the actual records are, because things can be referred to differently, or there may be, you know, a shortcut, or some acronym or something that folks didn't realize, and I just want to know how you guys handled that with the technology.

Doug Hibbard:

There can be. We like to do what we call dynamic searching, which is we'll do an initial search, and, like I said, we'll usually use a broad term. And then when we go through the records, we might realize, oh, wait, they start referring to it by something else. I'll give you an example. We had a request years ago about Khalid Sheikh Mohammed. And so, we searched for

records on Khalid Sheikh Mohammed, and we used "Mohammed" and other variations, but obviously, that's a common name. And then we started seeing records that we got from a different source, we got from a paper source, and we said the name Khalid Sheikh Mohammed is nowhere in these records, but it is responsive. It is about him. How is this true? And then we realized: it's a long name. Everyone refers to him as KSM. And so we said, ah, we need to do more searching. We need to go back and search using the term "KSM," because that's how people refer to him. That's how we do these records. So, it's not a static one-off search where I plug in my terms and then I call you on the phone. It's dynamic. It's going back. It's searching more. It's being flexible and changing the process so that we are getting to the responsive to your request as soon as possible. Yes, and sometimes it is a matter of talking to the records custodians themselves and saying, "Yeah, I was all over this topic. This is what I did for six months, and we referred to the committee as this," or "I referred to it as that," or "It's in this folder." So yes, that's all information we take in to make sure we're conducting an adequate search. But part of it is having that dynamic process of constantly evolving our searching, and not just saying, "Well, we did a search, and that's what you get."

Alina Semo:

I actually have a question that I'm curious about. This is Alina. How much do you still find that you're knocking on office doors to get paper copies of things that are responsive, of items that are responsive?

Doug Hibbard:

Much less. Much, much less, in part because most everyone does things these days electronically. It's just more efficient. We now process our FOIA requests electronically. We stop buying red folders. Everything used to be in a red folder. (laughter) We stopped doing that years ago. There's still some hanging out, but that's it. But so -- and like Melanie was saying, a lot of it comes down to efficiency. It's being -- us being able to conduct that search without having to interfere with the records custodian, without having to say, "I need to take time out of your busy day to come down to your office and start flipping through your files," because everything's electronic. If someone says, "I have paper on this, I have actual paper in my file cabinet," then by all means, yes, we're going to go down there and get those records. Same thing with classified material: we're going to go through that process. But more and more people are just use -- doing things electronically, via

email, via their computer, and we can search that remotely with these e-discovery tools.

Ginger McCall:

Are the e-discovery tools ever accessing Privacy Act protected systems of records? And if so, did you need to publish a new SORN when you obtained this -- these tools?

Doug Hibbard:

Not that I'm aware of, but, again, I wasn't involved in the obtaining of tools. So, I mean, the procurement was happening long before I got involved with it.

Alina Semo:

Anyone on the phone who would like to ask questions? We didn't forget about you.

Nate Jones:

Nate Jones. Hello?

Alina Semo:

Yes, Nate? Go ahead.

Nate Jones:

Sure. Pretty simple question: does -- do these e-discovery tools find documents that would have been missed without them? So, if someone did a search without these tools they might give a "no documents" response, but do these tools ever turn up the search where records that are then found?

Doug Hibbard:

I have no way to either confirm nor deny that one, basically. I don't know, (laughter) because I've not had any instances where it's like, oh, there was something. And so, I don't have an answer to that one. Sorry. (laughter) Yeah.

Alina Semo:

Anyone else on the phone? Questions? Comments?

Raynell Lazier:

Yes, hi, this is Raynell Lazier from CFPB. I was wondering if you mind letting us know which e-discovery tool you're using. It seems like you're pretty comfortable with it.

Doug Hibbard:

Well, we -- I've used three over the years. I've used Relativity, I've used Clearwell, and I've used Concordance. But I did a Google search this morning and found a webpage that

listed 85 of them, so there's a lot out there. Those are the three I've used. They've all -- basically do the same thing, different bells and whistles, different interfaces, but they all do the job.

Raynell Lazier:

Thank you.

Alina Semo:

Anyone else on the phone? Questions or comments? All right, I think (applause) we can give you a thick round of applause.

Thank you so much, Doug. So, Logan, I'm going to turn back to you and Nate. I don't know which one of you is going to give us a summary of -- but I know you guys have been very busy in your subcommittee, so if you could share with us what you've been doing, that would be great.

Logan Perel:

Sure. This is Logan, and I'll start us off, and Nate can correct everything that's wrong that I'm about to tell you.

(laughter) So subcommittee met a few weeks ago, and first thing we wanted to do was obviously bring in OIP today and give the wonderful technology presentation, because we wanted to highlight that there are solutions out there, and that, you

know, this is one of the ways that we think the search process can be improved. One of the things that we included in everyone's materials today was Nate at National Security Archive and Project on Government Oversight conducted a survey on FOIA search, and they surveyed some of the government agencies and the public, and the results are there, and we wanted to -- everyone to kind of be able to see that. And, you know, one of our main takeaways in the subcommittee from the survey was that there's a lack of access to technology, and there's inefficiency created by that. I mean, I think we all knew that, but kind of previewing that, and then with the presentation today, you know, there are ways to improve it.

And one of the goals that the subcommittees established is to kind of, before the end of the term, make recommendations to agencies. There's no one size fits all, but we want to come up with best practices and kind of highlight some of the available technology options, and we first think we need to survey agencies, maybe talk to industry, talk to some a-- talk to further agencies that have implemented technological solutions, and come up with best practices that can be adopted from, you know, maybe a small, 100-person agency to a large, 100,000-person agency. So that's something that the subcommittee's going to continue to work on. I think we discussed possibly

doing that through case studies, as well, and we may also invite industry or agencies to come back and present at future subcommittee or committee -- full committee meetings so that everyone can have the full benefit of that. I think at this point I can turn it over to Nate and see if Nate has anything additional to add, or any of the subcommittee members.

Nate Jones:

Sure. This is Nate Jones. Thanks, Logan. You've pretty much hit it all, but I would just add two other things that I think we tentatively agree on and will look towards. And one is parallel to an OGIS recommendation, but I think still hasn't been fully fulfilled, and that's the recommendation to build in FOIA with pretty much all technology that you buy. So, Doug mentioned that most email in the cloud, and Chris mentioned searches for FOIA, but I think our surveys show that lots of agencies don't have this, aren't using it, so they should. So that's point one. And then point two is the larger point that I think we all maybe suspected, but now we have at least some body of proof from FOIA processors that answered, and requesters, that search is a huge bottleneck in the FOIA process. And if we're actually worried about lessening these yearlong delays in FOIA requests, which I certainly am, a primary or the primary way to fix these delays is fixing the search. And I suspect --

I'm speaking for myself, not the results of the survey -- I suspect that the way to do this is to give search -- is to give FOIA processors more search responsibility and less for the subject matter experts, which it appears to me often take a very long time, because they're busy with other things. So that's -- those are my two points. One, build in FOIA as you buy technology. Two, fix the bottleneck. And I think we have proof now that search is a, or *the*, bottleneck.

Alina Semo:

Logan, anything else you want to add?

Logan Perel:

I think that's it.

Alina Semo:

We should also mention for our audience that the survey results that the National Security Archive has posted on their website - - help me out, Nate, please, website URL is --

Nate Jones:

NSArchive.org.

Alina Semo:

I'm sorry, can you repeat that?

Nate Jones:

NSArchive.org.

Alina Semo:

Thank you. Okay, thank you. All right, any other comments? Questions? Jill.

Jill Eggleston:

This is Jill. One thing that I wanted to add to Nate and Logan's report: the other thing that the subcommittee talked about is perhaps a recommendation either from OGIS or OIP about the necessity of building accountability into performance standards for our program offices, so the individuals that we rely on to complete these searches. If part of their performance was evaluated based upon how responsive they are to FOIA requests, I think we'd see an increase in cooperation.

Melanie Pustay:

Now, we have -- this is Melanie -- we -- at DOJ last year, we developed performance standards for non-FOIA professionals, for exactly -- addressing that exact point, and at -- and we blogged about it and put the material on our website, because we do

think it's really important and helpful. And within DOJ, we are -- those standards, then, have been incorporated throughout the department for non-FOIA professionals. Because obviously, lots of times FOIA professionals do rely on subject matter experts to help. So, we have -- we made that material available, and the Associate Attorney General sent out a memo to all the agencies encouraging them to adopt those standards, or incorporate those kind of standards into their own performance evaluation. So, there's a lot of work that's been done on that, and you can just look right at our website to get the materials.

Alina Semo:

Okay? I think -- thank you very much for all of that, Nate and Logan. I know you've been doing a lot of great work. Thank you to all the other subcommittee members. Again, if you want to join the subcommittee, I'm sure they'll still welcome you with open arms. So, I know we're running ahead of schedule, but I think it's a good idea to take a short break, comfort break, if you will. Just, again, a reminder that restrooms are right outside of the theater, as well as on the first floor, on the ground floor, where the Charters Café is. Earlier I was told the Charters Café is closed in the morning. I'm hopefully perhaps they are open now. No?

Melanie Pustay:

No, I'm getting a signal no.

Alina Semo:

No. So, I can't invite anyone to go to the Charters Café, but you can go to the restrooms. (laughter) So why don't we adjourn, and why don't we all come back by 11:25?

Melanie Pustay:

Great, thank you.

(break in meeting) [02:03:37-02:19:59]

Alina Semo:

All right, I think everyone is back. Thank you, everyone, for coming back in a timely fashion. Folks on the phone, are you back on?

F:

Yes, we are.

Alina Semo:

Okay. I only heard... Is Nate still on? Jim? We've lost them. Okay. They know how to call in, right? All right, well,

thank you, everyone. Was the Charters Café closed? Can someone confirm that? I'm sorry. Did not plan that well, either. We'll work on that for next time. So, we're now going to turn to our last subcommittee, last but not least, Efficiencies and Resources, and they happen to be sitting right next to each other, perfectly arranged by Amy. Co-chairs Ginger McCall and Chris Knox are going to provide us with your updates, activities, what you've been up to, and open it up to comments from the committee. Thank you.

Ginger McCall:

Great. This is Ginger. So, our subcommittee agreed on a somewhat aggressive schedule of biweekly meetings and check-ins, because we're hoping to be able to move forward relatively quickly with our project. Sean, thank you, Sean, so much for compiling the statistics. With the use of the statistics that Sean compiled from the annual FOIA reports, we identified several agencies of particular interest. We picked five large agencies and five medium agencies. We defined large as receiving 10,000 or more requests per year, medium as between 500 and 10,000 requests, and small as less than 500 requests per year.

So, the five large agencies that we saw that we were interested in were OPM, Treasury, EPA, DHS, and DOL, and our five medium agencies that we'll be focusing on are Department of Interior, PBGC, USCPSC, NASA, and FTC. Don't ask me what some of those abbreviations stand for, (laughter) because I don't remember. I know DOL. So, we are going to be looking at those agencies. And we thought, particularly for the large agencies, that it would be helpful to also maybe consider focusing on certain components within those agencies. So, in our meeting, two meetings ago, we volunteered to look at particular agencies, and to identify components of interest in those agencies, in those large agencies, and then to move on from there. So yesterday we spoke about that assignment, and we iden-- we had identified successfully several components within the agencies. I know at Department of Labor we're particularly interested in OSHA and in Wage Hour Division, because those components process a particularly large volume of requests. Interior, it's the Fish and Wildlife Service, which, when I did my evaluation of the components of that agency, came up as pretty excellent across the board. We were looking in particular at number of requests that were processed per full-time employee hour, we looked at number of requests that were processed per dollar, and we also looked at what agencies had the largest percentage of complex

requests, and then processed those requests successfully, because those are the more time-consuming requests.

So, we were looking not only at number of requests received and processed, but also the complexity of those requests. And we did identify several other components within other agencies that we thought were particularly interesting. The EPA -- I think it was region two that we discussed -- had a particularly large volume of requests, and sort of interesting -- positive interesting -- processing times and use of resources for those requests. And we decided we would also look at the headquarters of EPA. And then for some of the other agencies, we're still evaluating which components we'd like to focus on.

So, the next step of our project is that we're hoping to reach out to those agencies and components to interview people within those offices to get at the sort of data that we can't necessarily get at just by looking at the numbers, or even by looking at the chief FOIA officer reports, which was another thing that we had looked at recently. So right now, we are working on brainstorming questions that we'd like to follow up and ask those agencies. The members of the subcommittee are going to be working on those questions, but we would welcome your input for questions that you think would be meaningful

questions, particularly that get at backlog issues or efficiency issues, or resource use issues would be very helpful.

So that is the next step, and our next subcommittee meeting is set for two weeks from yesterday. I think that's May 3rd, right? May 3rd at 4:00 p.m., we'll be doing the phone call for that meeting. And if you have any suggestions, feel free to email them to myself and the co-- and co-chair Chris, and please make sure that you CC Amy at OGIS.

Alina Semo:

Okay, thank you very much. Chris, anything you want to add?

Chris Knox:

No, that was... No, that was an excellent summary. I -- we want to thank Sean for pulling the -- pulling all the numbers together. He not only pulled it together for the parent agencies, but then went back through for the components, as well. So, thank you.

Sean Moulton:

And I'll thank Melanie, (laughter) for having all the data up on FOIA.gov, and making it so much easier.

Melanie Pustay:

And I'll thank the compliance team, (laughter) for doing all the hard work of getting that data ready for FOIA.gov.

Alina Semo:

Great. Any other subcommittee members want to chime in, talk about anything that you've been looking at? Okay. Anyone on the phone? (pause) Okay. It's all quiet on the Western front. All right.

Ginger McCall:

We would welcome new additions to our subcommittee, if anyone would like to volunteer. (laughter)

Alina Semo:

Yes, there you go. There was another pitch. How many members do you have currently?

Ginger McCall:

Six or seven?

Chris Knox:

It's probably about six, maybe seven.

Alina Semo:

Oh, great.

Chris Knox:

And each one of us, I think, took two parent agencies, so there's plenty to go around, if anybody wants to help out.

Ginger McCall:

Also, if you're on the subcommittee and you weren't on the call yesterday, feel free to email us and let us know what the results of your inspection of the components was -- were.

Alina Semo:

Thank you, Ginger. All right, anyone else on this subcommittee, Efficiencies and Resources? All right, thank you very much for that report.

Ginger McCall:

Very efficient.

Alina Semo:

So, we are just rolling right through our agenda today. We're definitely going to get out early. I will not stand between you and lunch, for sure. I want to make sure that no one else on

the phone or any of our committee members here have any comments or anything else they want to report out or talk about today. So, I want to give that opportunity, and I'm --

Melanie Pustay:

I do have something, yes. (laughs)

Alina Semo:

-- and I'm going to open that up. Yeah, Melanie, please.

Melanie Pustay:

Okay. I started to blow my own scoop a little bit earlier, although it's not really literally a scoop, because we announced this yesterday in our -- on FOIA Post, but we obviously are just delighted that we have joined forces with 18F, the tech-savvy experts at GSA, to work on the consolidated -- what we're now calling the National FOIA Portal, because the whole idea of it is that it's -- that a web portal that allows an individual to make a request to any agency, and that obviously we hope will have many other additional features to help the FOIA process.

So we had been working with OMB, as this was part of a cross-agency priority goal, a CAP goal, and through that engagement we did secure initial funding for the project, which was, of

course, a really key, big aspect of the work that we're doing, and we have signed all our agreements with 18F, and we -- the big thing that we want to emphasize, and that I want to invite everyone to do, is to participate in it, because for those of you who know about 18F, the whole way they work is they don't -- we don't sit in a dark room and come up with requirements and say build it, the -- sort of the way contracting used to be in the past. The whole idea here is to have this iterative, open process, where 18F and our office, obviously, and -- we'll sit down and work with and listen to -- really, most importantly, listen to -- the views of agency representatives and requesters to figure out the best things that we could have the portal do. What are the biggest needs, and how feasible are the solutions that we could bring to bear to those needs? So, the whole process is very open, it's very dynamic, and we have set up a dedicated email box, national.foiaportal@usdoj.gov, and it's on our blog post. So please, just email. Now, we actually -- email if you'd like to be involved in the process, giving comments and getting updates on how we're going. We already had -- we put the blog up yesterday afternoon, and we have already I think about 15 people who have signed up that, you know, anxious to participate. And, of course, we're delighted to have people, as many people are as interested in doing it. So that's my news.

And I guess to tie it back to what I was going to -- what I was starting to say before in terms of proactive disclosures, part of a possible feature of the portal -- and obviously, the portal could -- it's -- we're going to have to build slowly and grow and add features over time, but part of the -- a logical feature for the portal would be the ability to find things that are already posted. So that all ties in with proactive disclosure, efforts that are underway, the whole... We've said all along that it's great to thing-- post things, but then we need to have the public be able to find what's posted, or else it doesn't really get us anywhere, it doesn't advance the ball. So, it's just another -- it's an obvious aspect that we will certainly be looking at as part of the portal process.

Lynn Walsh:

Lynn Walsh, the Society of Professional Journalists. I know you've talked about funding a couple times. Is there any way you can tell us how much the cost of this -- what the cost is?

Melanie Pustay:

So, the funding that we secured from -- with OMB's help was \$1.3 million. So that -- I don't know if that's -- you know, that sounds good. We're happy, obviously, with that amount. We

know, though, that that is what will help us start the initial project, and that certainly we're going to need more money going forward to maintain the portal. So, we're going to be continuing to work with OMB for additional funding sources. But we did get \$1.3 million, yeah. Yes.

David Pritzker:

Is your invitation for participation addressed to both government employees and others?

Melanie Pustay:

And requesters, yes. Yes, both, because the -- we've been saying all along, we -- absolutely, the portal has to work for both sides of the FOIA process, and we want it to be -- we don't want to just have -- open a firehose, and so it's really, really easy to make requests willy-nilly, and requesters are like, "Good, I only had to -- I fell asleep and I made a request," and that doesn't help FOIA. So, the whole idea here is to have the portal help requesters go to the right agency, ideally even before that help requesters find things that are already posted, so they don't need to make a FOIA request, and then help agencies be able to have more -- help agencies be able to handle the requests, intake the requests more readily, group them, that kind of thing. But we're really -- our approach here is to be

very open, open-ended, and have a real fulsome discovery phase. That's the terminology that we use, where we really talk about all these things that we could do, and figure out what is the best way to do it. But we're very excited, as you can tell.
(laughs)

Alina Semo:

Any other comments? Folks on the phone? Anyone want to comment or question that you want to throw out at this point? Do we have anyone on the phone? (laughter)

Melanie Pustay:

They found coffee.

Alina Semo:

They found coffee. Okay. Well, thank you very much. I know we're doing a lot of work, and I very much, again, appreciate everything everyone is doing, and just keep up all the good work. Amy is here to help. I'm happy to help, as well, although Amy's much more helpful than I am. And is there anything else I should add, Amy, before we move on to public comments? Okay.

So, at this point I want to turn our attention to public comments, opportunity to give members of the audience an opportunity to make comments. We usually allot about 15 minutes, so maybe we could just take it right to right before noon, so we can get out of here early. If you have any comments, please approach the microphones on each side. I think they actually are up and running now. So, Kel, thank you very much for your help earlier. We're okay now. Please state your name and affiliation, if appropriate. (laughter) No pressure.

Kel McClanahan:

I'll go first. Kel McClanahan, National Security Counselors, FOIA attorney and requester. I have a question for -- or a question and observation for the search subcommittee, that something that I have been recently running into with a lot of agencies is how they interpret a request for email requests. And I can just give you some simple numbers. As part of a project for one of my clients a couple weeks ago, I submitted a request to 12 different agencies, saying we want all emails to and from this person, you know, the director of your office or something like that, for the last 10 days. And that was the end of the request, because my client wanted all the emails. He didn't want emails about something. He just wanted, you know, to see what kind of emails were going out. And we got back

about an even split of responses. And the -- one half of the split is what I want to draw to your attention. Half of them said -- would call me or email me or similar, saying, "Can you give us something to narrow this?" And I said, "I'm sorry, no. Really, this is just for all emails." And they said, "Okay, great, thanks," and that was the end of it, and they processed the request.

The other half sent me a letter saying, "Unless you provide more information, such as the recipient or the sender or the subject, this is not a proper request, and if you do not respond within ten days we will close your request." That is wrong in so many different ways. The first problem is that, no, it's not a wrong request just because it asks for all emails in an account. But the second part is if you -- we interpret it this way, and if you don't respond we are administratively closing your request. We're not denying it. We're not refusing to accept it. It's this administrative closure thing that doesn't seem to be based in any statute language, but they're doing it, and they're imposing on requesters -- I have to believe I'm not the only requester this has happened to; I'm just, maybe, the only one who knows enough about it to fight them on it, saying, "If you don't give us this then too bad, you don't get to make a request." And I think that when y'all are addressing searching

and email, y'all should look to, you know, what happens when someone asks for emails that are not narrowly described. Do you just ask for clarification, but if they don't, you know, okay, it's going to be a long request? Or do you say, "Too bad, so sad, you don't it our way you don't get to make a request."

Melanie Pustay:

Kel, would you... My compliance team would be happy to look into this for you. If you want to talk to -- you know, I would really be interested to see, like, actually the letters that you got, and we can look into it for you, as a topic, just for -- you know, actually sort of see what you got exactly, and just look into it.

Kel McClanahan:

Are you [talk?] about an OIP compliance team, or about (inaudible)?

Melanie Pustay:

Yeah. Yeah, I mean our -- my OIP compliance team. I'm -- they just happen to be sitting right behind you there. (laughter)

Kel McClanahan:

Is there a publicly available email address where someone can send something to that team?

Melanie Pustay:

Yes, and you can actually -- yeah, just write Bobby. He's getting up right now. You can -- and -- but -- and you definitely can just send it to our OIP email address, or just talk to Bobby right now.

KEI McClanahan:

Okay.

Jason Baron:

Jason Baron. I'm at Drinker Biddle, and formerly at the National Archives, as Director of Litigation. I am extremely heartened that this committee has a search subcommittee, and that you have heard Mr. Hibbard today. I think search is an extremely important issue, and I think Doug Hibbard hit it exactly on the head, that email explodes FOIA requests. In the future, texts will, as well, texts and social media and other forms of shared collaboration. But email is still the 800-pound gorilla in this area, and it does mean exponential increases in volume. I knew as early as 2002 that there was a problem with keyword searching when I searched the NARA presidential email

database of 20 million emails using 12 keywords. We got 200,000 hits, and this is in the *US v. Philip Morris et al* RICO case involving tobacco, a case that I believe is still going on. So, in 2002, we searched 20 million presidential emails with 12 keywords. We found 200,000 hits, 100,000 of which -- 50% of which -- were false positives. They were noise. They were, like, policies about smoking in the bathroom, or Upper Marlboro, Maryland, or (laughter) other forms that -- or people's names that were aligned with the terms that were used. And so, it was very clear to me 15 years ago that keyword searching is an excellent tool as compared with manual searching, but it wasn't good enough for large volumes.

Now, with Capstone and with the Archivist's directive, not only for email to be kept at electronic form in 2016 but all permanent, permanently appraised electronic records have to be in electronic form going forward after 2019 to be accessioned into the archives. It's driving a large collections of records in electronic form: email, via Capstone; and other forms of electronic records. And when you're at a million and more records, which many agencies will be at via Capstone, keyword searching is better than manual, but it isn't the state of the art in e-discovery. In my firm, and in other leading firms in this area, e-discovery practitioners use predictive coding.

They use technology-assisted review. And I urge the members of this committee, and particularly the search committee, to look up predictive coding and technology-assisted review. There's a book at the ABA published called *Perspective on Predictive Coding* that I edited -- I get no royalties (laughter) -- that is really a primer on this.

Every agency and every FOIA officer, every CIO should understand that there's a big difference between searching a million or 10 million or whatever the number is, or even 75,000 using -- records using keywords, because the keywords will just give you a list, and Doug was exactly right: then you have to -- the tool doesn't provide the processing. But if you use predictive coding, you essentially get software to show you the best and most relevant documents in a ranked list. So, the 1 million documents are ranked from most responsive to least responsive. That means a tremendous efficiency in FOIA, because you can cut down having to look, on a manual basis, through the keyword hits, and eliminate false positives, and really hone in on a small portion of records that are at -- high on the ranked list, and perhaps give an early interim response to FOIA requesters, if the rest of the request is going to take years.

So, I urge this committee, and particularly the subcommittee, to think about reporting out to the government on these kind of tools. Alliston Stanton at Justice is someone, Melanie, you know well. She is one of the various DOJ experts in the area. There is a federal e-discovery working group of hundreds of e-discovery attorneys that I used to be invited to. (laughter) They have a B5 process so they don't invite outsiders anymore. So, I would urge some kind of outreach to learn what are best practices, because every large agency is going to be in the same soup as the National Archives. The Archives now has more than 500 million emails, from the Obama, the Bush administration, the Clinton administration, and others. Other agencies are going to be in that boat, and they need better search tools than just keywords. It's a conversation that this committee should carry forward to advance the purposes of FOIA. Thanks very much.

Alina Semo:

Thanks, Jason. (pause) Any other comments? All right, I think we're good. Thank you again, everyone, for coming today. Really appreciate your attention, and you've been a very attentive audience. Committee members, thank you again for all your hard work. And we stand adjourned. Thanks.

Melanie Pustay:

Thank you. Thanks, Alina.

END OF VIDEO FILE