Report of the Technology Committee of the Chief FOIA Officers (CFO) Council – Best Practices and Recommendations

February 14, 2020

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TO: Co-Chairs, Chief FOIA Officers Council

FROM: Technology Committee
DATE: February 14, 2020

RE: Report of the Technology Committee of the Chief FOIA Officers (CFO) Council
               – Best Practices and Recommendations

In response to a recommendation of the 2016-2018 term of the Freedom of Information Act
(FOIA) Advisory Committee, the Archivist of the United States proposed that the Chief FOIA
Officers (CFO) Council seek to establish a technology subcommittee, in partnership with the
Chief Information Officer (CIO) Council, to study the utilization and deployment of technology
in FOIA programs across agencies, and identify best practices and recommendations that can be
implemented across agencies.

In September 2018, the Directors of the Office of Government Information Services (OGIS) and
the Department of Justice Office of Information Policy (OIP), who co-chair the CFO Council
(*see* 5 U.S.C. § 552 (k)(3)), established the Technology Subcommittee (the Subcommittee, later
renamed as the Technology Committee). The Committee is co-chaired by senior FOIA
professionals at the Department of State and the Veterans Health Administration (Department of

Veterans Affairs); membership includes FOIA professionals from the Departments of Homeland Security and the Interior, National Aeronautics and Space Administration (NASA), the National Institutes of Health (NIH), Institute of Library and Museum Services, American Battle Monuments Commission, Social Security Administration, Air Force Declassification Office, and the Consumer Financial Protection Bureau. The Committee liaised with OIP and OGIS.

Beginning in December 2018, the Committee met monthly, usually twice a month, to implement its three primary objectives:

1. Study the utilization and deployment of FOIA technology solutions/approaches across agencies;

2. Identify and highlight best practices/programs; and

3. Make realistic recommendations that can be implemented across the spectrum of FOIA operations (small to large operations).

For Objective 1, the Committee leveraged its own members' knowledge and experience to establish a series of questions and criteria to assess the information technology (IT) maturity at Federal agencies. Additionally, the Committee attended briefings, shared technical FOIA IT requirements from multiple Federal agencies, and reviewed all publicly available Fiscal Year (FY) 2018 Chief FOIA Officer Reports. The Committee learned that the FOIA technology landscape across the executive branch is very broad in its range of maturity and capabilities (*i.e.*, some agencies' major milestones involve obtaining printing/scanning devices while others are experimenting with artificial intelligence (AI)). The Committee agreed that its recommendations should address the whole spectrum of IT maturity in agencies.

For Objective 2, the Committee identified several FOIA IT best practices. Specifically, the Committee grouped findings based upon the "maturity and current technological ability" of agencies rather than by agency size. One important observation is that some agencies rely on multiple IT solutions to conduct FOIA work (*e.g.*, one tool for case management, another for redaction, etc.). It remains unclear whether this is a best practice, since it works better for some agencies than others, but it is a somewhat common practice or at least an experience shared by several agencies. Another observation is that the implementation of a FOIA IT solution is improved if the agency first seriously considered and developed a plan for records management that includes FOIA capabilities and requirements. It is noted that some agencies house their FOIA and records management programs together, while others maintain their FOIA and records management programs in different parts of the organization. This observation suggests that the records management and FOIA operations within agencies should work together regardless of organizational structure.

For Objective 3, the Committee focused on preparing recommendations that are intended to be useful to all agencies, which proved a challenge given the wide variety in the organizational structure of agencies, their IT landscape, and the centralized or decentralized nature of their FOIA programs. In addition, the Committee solicited feedback from agencies and requesters for best practices and recommendations on multiple occasions. In July 2019, the Committee

discussed its work at the annual American Society of Access Professionals (ASAP) National Training Conference, and also consulted with a subgroup of key stake holders, including the Executive Committee of the Federal CIO Council. In January 2020, the Committee Co-Chairs briefed the full CFO Council.   Finally, in September 2019, the Committee Co-Chairs presented and solicited feedback at a meeting of the 2018-2020 term of the FOIA Advisory Committee. Both the FOIA Advisory Committee and CFO Council meetings are publicly available on YouTube at https://www.youtube.com/watch?v=O5NZxoEL_EQ and https://www.youtube.com/watch?v=1MxqpI8scsc&feature=youtu.be.

This report includes both the Committee's identified "Best Practices for Agencies," and "Recommendations for the Chief FOIA Officers Council." The Committee recognizes that the list of best practices is not exhaustive, and that there are likely others throughout Federal agencies deserving of recognition. The Committee's "Recommendations for the Chief FOIA Officers Council" are based upon the Committee's findings over the past year, and its recognition that further research and work is needed in the various ways that technology plays a role in the FOIA process, from how requests are submitted to agencies, to how agencies interact with the public on the status of requests, to how agencies search for, review, and redact/sanitize records for disclosure, including leveraging developments in AI such as machine learning and technology-assisted review, to posting records online after their release to requesters and ensuring people with disabilities have equal access to the information in records as required by Section 508 of the Rehabilitation Act, and much, much more.

FOIA Technology Landscape: Who is Doing What?

Since December 2018, the Committee solicited, received, and analyzed broad perspectives from dozens of agencies about their FOIA processing requirements and current capabilities. In addition, the Committee analyzed all of the available FY18 CFO reports. Provided below are examples of some of these perspectives from both direct interactions with agencies and their 2018 CFO Reports. As the Committee continues its work in FY20, it will seek additional perspectives from both the public and private sectors to enhance these efforts.

Case Processing and Redaction Tools as a Panacea?
One agency reported it is planning an upgrade to its electronic FOIA system that would enable it to:

1. Load and sort PDFs
2. Implement a record retention policy
3. Assist in de-duplication

The agency also reported that the vendor expected the enhancements would decrease its "processing time by 40%." While the Committee is encouraged by agencies that are actively embracing IT improvements, we caution that the statistics, especially those quoted by vendors, should be carefully analyzed and considered before taking any action. Only after implementation of an IT system, including agency-wide training and integration of IT upgrades, can programs accurately quantify any newfound efficiencies. A vendor's successful

implementation of a technical solution at one agency may not produce the same results in another FOIA program in a different IT and records management environment.

Technical Limitations – Making Data Available Online
Agencies have varying abilities to proactively post data online, with at least one agency reporting that it could "encounter challenges in posting large databases." This limitation would force that agency to "consider both the impact of posting a large amount of data … and the data's importance to the public." If the data was requested three or more times, the agency would be required to find a way to post requested records. Identifying and overcoming these challenges before the records are requested is critical as agencies embrace both proactive and mandated disclosures under the FOIA.

Single Points of Failure
Technology and FOIA processing systems should enable FOIA programs to avoid such challenges reported by one agency whose many components "rely on the efforts of a single employee, for whom FOIA is one of many responsibilities, to facilitate the collection of records responsive to incoming FOIA requests." The agency continued by reporting that "significant turnover in [staff] across the agency has proved to be a noteworthy hurdle in both maintaining consistent practices and closing FOIA requests." Some agencies had similar stories of FOIA requests being assigned to one or a few employees with high turnover rates; these turnover rates affected the ability of these agencies to process FOIA requests. Having clear FOIA procedures and supporting technology to implement those procedures could help mitigate this issue at agencies where there are few FOIA resources or where FOIA is an ancillary responsibility. In fact, they can help most agencies. IT solutions and the processes that they support can be built in with backups throughout the system in order to mitigate the impact of turnover, routine or unexpected leave needed by FOIA employees, and single points of failure.

Understanding and Embracing FOIA Technology

Agencies reported routinely reviewing their "entire FOIA processing system to identify any improvements and efficiencies that can be made." One agency also pledged to "evaluate other agencies' technology tools to see if they may be of value." The Committee believes that empowering all agencies to better understand existing FOIA technical capacities across agencies is critical in accelerating the pace by which agencies embrace and implement FOIA technology.

Programmatic Reality
As one agency reported:

> Acquiring technology to help meet the ever-increasing demands of FOIA is only half of the battle. Often the technology that FOIA professionals leverage to search and review records are not specifically designed with FOIA in mind.… By working closely with our technological experts and conveying the unique nuances of the FOIA process, we are able to ensure that the technology we are using is being leveraged to the fullest extent possible for FOIA purposes."

The Committee feels that this gets to the heart of the issue. Strong partnerships between the FOIA, IT, and vendor communities is critical if overworked FOIA staff are to be able to effectively adopt new technology solutions.

FOIA IT Best Practices

1. Senior-level agency support of records management and FOIA programs make a difference.

    - The Committee observed that senior leadership acting as champions of records management and FOIA programs has been important for agencies that are experiencing success. At certain agencies, CIOs and CFOs are playing these roles in their agencies. The Committee Co-Chairs also emphasized the importance of partnerships among CIOs and transparency programs for their success.
    - A visible display of IT support for records management and FOIA from the head of an agency and/or the most senior levels of management in an agency sets a tone that allows for success in these programs. This includes a message or memo to all staff regarding the importance of good records management and a responsive FOIA program, and/or simply mentioning the importance of complying with the programs in large meetings and/or with other senior managers.

    - Senior-level managers should be briefed on the impact of FOIA with at least three touchstones:
        i. The FOIA's legal requirements including Federal employees' federal records and FOIA responsibilities,
        ii. The consequences for non-compliance with these legal mandates, and
        iii. The impact of FOIA litigation on operations (including the agency budget).

2. Understand your agency's records management policies and engage with records management staff.

    - Having clear records management policies, standards, and practices sets the FOIA program up for success. Technology that supports the capture, storage, search, deduplication, and appropriate and timely destruction of electronic records furthers the FOIA program's ability to succeed. Without sound records policies, enforcement, and technical tools to implement them, FOIA becomes exponentially more difficult to implement.

    - National Archives and Records Administration (NARA) policies guide agency compliance with the Federal Records Act, 44 U.S.C. Chap. 31. By working with records management staff, an agency can leverage both records and FOIA programs to drive agency compliance and ease the collection and eventual release of records.

3. Identify records and FOIA IT requirements (*i.e.*, needs for a technical IT solution) by engaging stakeholders in program and FOIA offices. Write down the requirements and use them to determine what technical tools are needed for success.

   - Communication is critical to success. Understanding the needs of FOIA programs, including IT needs, focuses the discussion within an agency as to how to get from the current IT environment to the desired future state. Having written requirements helps ensure common shared understanding of what is sought.

4. To the extent feasible, ensure IT solutions and FOIA case management tools are interoperable.

   - Interoperability between FOIA case management tools reduces the administrative burden and eliminates the duplication of efforts in the case of an inter-agency referral, significantly decreases the time and resources needed to prepare annual or other oversight reports, and allows the agency to better share resources. Leverage IT solutions for additional FOIA case processing efficiencies, whenever possible.

5. Consider cost savings through shared services.

   - IT solutions exist that easily de-duplicate records, improve the precision of electronic searches, and ease the redaction of records. While these tools often require a significant investment of resources, an agency can save significant staff resources from their use. These tools may already be in use at the agency, and FOIA offices may be able to leverage existing agency resources and licenses to use these tools at a more reasonable cost.
   - FOIA offices should look for creative, cost-efficient solutions and partnerships to access processing tools that are only rarely or occasionally needed. For example, an agency may only need to review and redact videos in response to a handful of requests each year. The FOIA office may be able to split the costs of these tools with other offices that use these kinds of tools more frequently.

6. Posting released records online may assist FOIA programs and can provide public access to previously released information and records. Many FOIA professionals report concern over their inability to post information due to Section 508 concerns.

   - Each record that the public can find online has the potential to obviate a FOIA request and reduce the overall processing time and costs to comply with the FOIA.

7. Build public release of records and disposition of records into new agency recordkeeping systems.

   - Engaging with program offices to ensure that records can be easily extracted and disposed of, when appropriate, from agency record-keeping systems and that non-

releasable information is segregated and meta-data tagged can potentially decrease an agency's FOIA burden.

8. Have an IT component in FOIA programs and/or a close, formally established relationship with the IT component of an agency.

   - Agencies with IT staff in their FOIA program have more leverage over how their case management/processing IT solutions operate.
   - See the July 2019 OGIS Report (https://www.archives.gov/files/ogis/assets/leveraging-technology-to-improve-foia-searches-31-july-2019-final.pdf) and OIP Best Practices from December 9, 2014, and July 17, 2014, (https://www.justice.gov/oip/best-practices-workshop-series) for additional perspectives on this best practice.

9. Leverage the budget cycle to request resources needed for FOIA programs.
   - Annual budget requests for FOIA technology need to be submitted by FOIA programs, including requests for the appropriate FOIA and/or IT personnel. The need for additional resources must be continually and persuasively made in these requests.

10. Network with fellow FOIA professionals to candidly share challenges and methods to overcome those challenges.

    - Some challenges directly lend themselves to a direct IT solution and some may not be solvable without a holistic approach.
    - There is incredible talent throughout the ranks of the FOIA community and there is tremendous value in sharing the approaches and solutions implemented across agencies.

The Committee is also keenly aware that most IT-related recommendations are quickly dated and innovation is constantly occurring throughout the entire FOIA community. Being aware of these innovations and being willing to embrace new solutions is critical to success in the current FOIA landscape.

Technology Committee's Recommendations for the CFO Council

1. Either maintain the Technology Committee, or establish a standing body to advise and assist those Federal agencies interested in leveraging the experience of Federal agencies in creating or further developing the technical abilities for their FOIA programs.
   - The broad range of IT maturity among agencies means that different guidance will be sought and needed depending on an individual program. For example, some smaller agencies with fewer resources may depend on their larger parent agencies for IT support. Larger agencies may have fledgling IT support for FOIA programs or well-established processes or tools. As a result, the Committee recommends keeping active a body like the current Committee to serve as a resource and provide consultations to agencies seeking guidance or feedback on

their FOIA IT issues. This recommendation is not seeking to mandate that agencies meet with the Committee but rather offer continuing support to those agencies that do not even know how to get started to improve their FOIA IT practices and/or are interested in improving their current FOIA IT practices.
- A clear process for such consultations should be established. A few members of the Committee that form diverse agency representation would participate. Consultations could vary from a single meeting or a short series of weekly meetings for a month depending on the IT maturity of the agency and the specific guidance sought. Such an effort would help to "Share the Word" about FOIA and technology throughout Federal agencies interested in learning more.

2. Consider partnering with the General Services Administration (GSA) to develop contract schedules for agencies to leverage the acquisition of frequently purchased FOIA management and processing tools at a government-wide rate instead of at individual contract rates per agency, which is likely more expensive.

3. Consider having a similar GSA schedule for Federal records management solutions, and the IT support to implement such records management solutions.
- NARA's Federal Electronic Records Modernization Initiative (FERMI) worked with GSA to create a Special Item Number (SIN) for Electronic Records Management (ERM). Vendors must self-certify that they meet the Universal ERM Requirements to be included in the SIN (https://www.archives.gov/records-mgmt/policy/fermi).

4. Consider the possibility of establishing an annual venue or opportunity for agencies to see technological developments in both the private and public sector (*i.e.*, an annual or semi-annual event where vendors and government organizations such as 18F can showcase new tools and abilities).
- Exposure to trends in the private sector could potentially assist Federal agencies in identifying the tools that they need to enhance or improve their FOIA programs. The Committee found that agencies were unaware of technical options and solutions available to them outside of a handful of commonly known FOIA case processing tools used by and/or available within agencies. Some smaller Federal agencies are seeking simple IT solutions while larger ones managing greater volumes of data are often seeking more complex IT solutions.

5. Consult Federal agencies to seek the specific FOIA tasks where technology may be able to assist with this work. Share the results of this review with CFOs and Federal FOIA offices to raise awareness of shared challenges and possible solutions. For example, provide a brief update at CFO Council meetings.