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

Approved Meeting Minutes —July 21, 2016

The FOIA Advisory Committee convened at 10 a.m. on Thursday July 21, 2016 in the William G. McGowan Theater at the National Archives Building at 700 Pennsylvania, Avenue, N.W. Washington, D.C. 20408-0001.

In accordance with the provisions of Public Law 92-463, the meeting was open to the public from 10 a.m. to 1:05 p.m.

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

Committee members present in McGowan Theater:

- Nikki Gramian, Acting Chair, OGIS/NARA
- William Holzerland, Food and Drug Administration
- Chris Knox, Deloitte
- David Pritzker, Administrative Conference of the United States
- Ginger McCall, Department of Labor
- Helen Foster, Department of Housing and Urban Development
- James Valvo, Cause of Action
- Jill Eggleston, U.S. Citizenship and Immigration Services
- Melanie A. Pustay, U.S. Department of Justice
- Michael Bekesha, Judicial Watch
- Nate Jones, National Security Archive
- Raynell Lazier, Consumer Financial Protection Bureau
- Sean Moulton, Project on Government Oversight
- Stephanie Carr, Department of Defense
- Thomas Susman, American Bar Association

Committee members on the phone:
- Margaret Kwoka, University of Denver, Strum College of Law
- Mitra Ebadolahi, American Civil Liberties Union
- Logan Perel, Department of Homeland Security

- Lynn Walsh, NBC7/ Society for Professional Journalists

Others present or participating in the meeting:
- David Ferriero, Archivist of the United States
- Megan Smith, U.S. Chief Technology Officer
- Shaun Donovan, Director of the Office of Management and Budget
- Meredith Stewart, NARA
- Amy Bennett, OGIS/NARA
- Kate Gastner, OGIS/NARA

Introductions and Announcements

Acting Committee Chair Nikki Gramian opened the meeting and introduced the Archivist of the United States (AOTUS), David Ferriero, who offered opening remarks. Mr. Ferriero explained the creation of the committee and discussed the recently passed Freedom of Information Act (FOIA) Improvement Act of 2016 and its impact on the Office of Government Information Services (OGIS), as well as the creation of the Chief FOIA Officers Council. Mr. Ferriero provided updates on the status of the vacant Director positions at both OGIS and the Information Security Oversight Office (ISOO). Lastly, Mr. Ferriero assured the new committee members that he continues to review the work of the committee's first term and is exploring a range of possible actions he can take on that committee's recommendation.

Ms. Gramian then introduced the next two speakers, Megan Smith, U.S. Chief Technology Officer and Shaun Donovan, Director of the Office of Management and Budget (OMB). Ms. Smith discussed the collaboration between the Office of Science and Technology Policy (OSTP), OMB, the Department of Justice, and others on open government activities, which includes activities like opening 180,000 data sets since the beginning of the Obama Administration. She discussed the work of the Open Government Partnership, which facilitates discussions between civil society and governments across the world, and which collaborates on open government and digital government issues. Ms. Smith then discussed the United States' third Open Government National Action Plan (NAP), explaining that each iteration of the plan has had substantial input from open government and FOIA groups. She thanked the committee members for their service and stated her staff considers the members are the "Navy SEALs of FOIA." Ms. Smith then introduced Shaun Donovan.

Mr. Donovan thanked Ms. Smith for her leadership and thanked the committee members for their service. Mr. Donovan observed that it was fitting for the committee members to have their meeting at the National Archives on the 50th anniversary of the creation of the FOIA bill. He stated that it is important that we look forward and continue to ask the question, "What do we need to do to continue improving FOIA?" Mr. Donovan remarked that FOIA is one of the most important ways citizens can find out what is going on in government and it has served as a model for other countries and governments around the world. Mr. Donovan continued his remarks stating that too often there are traditions and values we take for granted in the United States. Though the United States is in the middle of an election year, he reminds his staff that we should

take a step back from transition activities to remember not to take a peaceful transition of power for granted and he drew a parallel to FOIA.

Mr. Donovan discussed the Obama Administration's dedication to transparency, starting with President Obama's first day in office when he issued a FOIA memorandum which stated agencies must apply a presumption of disclosure. Mr. Donovan provided statistics regarding disclosure rates and discussed agency technological practices and metrics. Mr. Donovan addressed the most recent amendments to the FOIA, signed into law on June 30, 2016. He highlighted a few of the reforms to the FOIA where he expects OMB to play a role. Mr. Donovan ended his remarks by congratulating the committee members and offered the assistance of the Cross Agency Priority (CAP) team. He asked that the committee members come back to OMB with concrete recommendations for FOIA improvements.

Introduction to the Committee and the Federal Advisory Committee Act

Designated Federal Officer Kate Gastner welcomed the committee members to the second term of the committee and provided a brief overview of the committee's establishment and renewal. Ms. Gastner reviewed the committee's structure, administration, and the responsibilities of the chair, vice chair and committee members. Then Ms. Gastner explained the establishment and responsibilities of subcommittees and the by-laws which govern the conduct and deliverables for both the committee and subcommittees. Ms. Gastner ended her presentation with an overview of committee operating procedures and voting procedures.

Committee Member Introduction and Brainstorming Session

Ms. Gramian introduced Meredith Stewart from NARA's Office of Innovation. Ms. Gramian provided a brief overview and the organization of the brainstorming session.

Ms. Stewart opened the brainstorming session by asking the committee members to fill out a short prompt of name, title, and organization, and the question, "I joined the FOIA Advisory Committee because____," to introduce the members to each other. Members in the room introduced themselves first, then members on the phone.

Ms. Stewart then moved the committee into two rounds of brainstorming. She instructed members on the phone to email their responses to the DFO and asked members in the room to answer the following prompt on the sticky notes provided in their folders: "I want a FOIA policy/process/law that _____." Ms. Stewart explained while members were writing, that this first part of the exercise was to find out what members' interests were. Ms. Stewart and Amy Bennett, from OGIS, grouped the members' responses into themes. Ms. Stewart read the responses aloud. *(see themes and responses in attachment 1)*

The next prompt asked members to respond to, "The hardest problem in FOIA is_____." As committee members were writing, Ms. Stewart explained that the public would also have a chance to comment and add their thoughts about the hardest problem

with FOIA. Ms. Stewart and Ms. Bennett grouped the members' responses into themes, and Ms. Stewart read the responses aloud. *(see themes and responses in attachment 2)*

Ms. Stewart asked the committee for their thoughts in addition to what they wrote down. Ms. Stewart listed the categories on a white board as members spoke. *(see topics in attachment 3)*

Melanie Pustay discussed how one of the hardest challenges in FOIA is the explosion of the volume of records. She explained how when the FOIA was originally drafted, there was no such thing as email and most FOIAs were for things like formal memos. Managing, finding, and producing records is one of the biggest challenges and agencies need technology to help manage the process, she said.

Ginger McCall stated that most of the problems with FOIA can be solved with money. She indicated that more money gets more staff (which effects delays and volume), more training for staff, and creates more buy-in. Ms. McCall pointed out that new FOIA bills are all unfunded.

Helen Foster agreed with Ginger, but said that the system is too complex and by simplifying the process agencies wouldn't need to spend so much money. She also discussed how agencies have unique needs and ideas like a request submission portal for the whole government presents challenges because agencies have to customize it to fit their specific requirements. She said she understands why the requesters are frustrated.

Ms. Gramian discussed how agencies get funding for technology but how, over time, that technology is obsolete and then agencies have to spend more money to keep the technology up to date and make it compliant with new requirements.

Sean Moulton stated that agencies focus too much on end-of-the-pipe technology, which makes things easier to find and search. He explained agencies need to start looking at how records are created, so that records are born digital with metadata and the person creating the record could make a determination whether the information should be publicly available and eventually it should be made publicly available without a FOIA request.

William Holzerland said the biggest issue for him is where efficiency can be created in the process, doing more with the little that agencies have.

Ms. Stewart asked for comments from the members on the phone.

Logan Perel stated that the government is not great at technology, and the underlying resource issues all contribute to a big data problem. He agreed with Ms. Foster that all the agencies are doing things differently, but if everyone came together on a solution, the government could accomplish something.

Ms. Pustay followed up Mr. Perel's comments stating that Megan Smith's remarks earlier showed that there are good examples of the government's use of technology, but that doesn't mean there isn't room for improvement in technology in the FOIA process.

Lynn Walsh added that before requesters can submit requests, it would beneficial if the public could contact agencies to discuss requests prior to making them, cutting down on work for both sides.

Mitra Ebadolahi offered the idea that some of the burden on the agencies could be eliminated through proactive disclosure. She stated that certain types of information should be publicly available so that a FOIA request wouldn't be necessary.

Margaret Kwoka said that whole categories of records that are frequently requested at agencies could be designed on the front end with proactive disclosure in mind, which could add efficiencies on the government and requester side.

Ms. Gramian discussed that one of the challenges to proactive disclosure is accessibility compliance with Section 508 of the Rehabilitation Act of 1973, which was something the last committee looked into.

Ms. McCall followed up Ms. Gramian's comment by reminding the committee about the issue of senior leadership buy-in, and trying to get the necessary technology and funding and staffing to make transparency into technology and frequently requested documents.

Ms. Stewart mentioned that after the break there would be time for public comments. Ms. Gramian made a few announcements, then stopped the meeting for a 10-minute break.

Break 11:35 a.m.

Brainstorming Session (continues) 11:45 a.m.

Ms. Stewart resumed the brainstorming session by asking for comments from the public for inclusion on the charts.

Alex Howard from the Sunlight Foundation commented that the United States is pretty good at technology, but there is no national will to do FOIA better. He said the issue is how the money is being spent on FOIA. Mr. Howard pointed out that a FOIA portal has been included as a commitment in Open Government National Action Plans, but only recently was the money spent to actually create it. He stated that the issue is political will and lack of consequences of following through, which he hopes the committee will look into. He mentioned that ProPublica reporters posted FOIA horror stories. He stated that it is unclear if there are consequences for not following the FOIA and noted that the recent House FOIA bill included such consequences. Mr. Howard also discussed proactive disclosures and how at some agencies commercial requesters are the biggest group of requesters, and stated that the law was not designed for commercial requesters to use the FOIA to make money. He asked why agencies are not using FOIA logs to determine categories of records that are being requested so they may be released without a FOIA request which would lift some of the processing burden off agencies.

Noah Smith commented that agencies could improve their efficiency regarding requests for records that have already been disclosed. He said that requesters aren't always aware that the records were previously processed and the agency might not know either.

Hannah Bergman, speaking in her individual capacity, recommended that the committee consider bringing more people to the table when it comes to technology. She encouraged the committee to talk to software developers and data scientists about how to use technology effectively and have those types of people in the room for discussions around 508 compliance.

Amy Bennett, speaking in her individual capacity, spoke about FOIA being used as a tool to obtain immigration paperwork and veterans benefits but because of the structure of the FOIA itself, those communities aren't are served well. She suggested the committee look into the possibility of recommending other disclosure statutes that could better serve the communities of people who need documents for specific reasons so FOIA processors can focus on the types of requests which help the public understand the government's activities, which was the original intent of the law.

Ms. Stewart turned the meeting back to the committee and asked each member to take one red sticker from their folder and vote on the issue which they think is the hardest problem. Members on the phone submitted their votes via email. Members placed stickers on the categories that the problems were grouped into, then Ms. Stewart reported out the results.

Voting Tally

- Technology—9
- Commitment/Awareness—7
- Delays—2
- Funding—1

Next, Ms. Stewart turned the focus of the brainstorming discussion to the committee's work for the next two years. The first prompt asked members to think about how the committee can be most effective around the hardest issues in FOIA. The second prompt asked how the committee's work should be organized over the next two years. *(see attachment 4)* Ms. Stewart asked the four returning committee members to share what worked for that committee and what they think could have been done better.

Mr. Jones said that the previous committee focused on high-level issues, but in doing so lost the stories about actual FOIA requests, requesters, and processors. He wants to use the committee to highlight both positive and negative stories from agencies. He also suggested that committee members shouldn't feel constrained by the eight committee meeting schedule; he suggested that they should make decisions and recommendations more frequently.

Mr. Moulton agreed that three months is a long time to wait to accomplish something between meetings. He suggested changing the schedule to meet every two months for the first six months of the committee's term. He said the previous term's schedule created inconsistency in the

discussion. He also suggested that the committee focus on recommendations, rather than gathering data.

David Pritzker agreed with Mr. Jones and Mr. Moulton and emphasized that the committee should identify as soon as possible what's working and what's not working. He said that a lot of time on the last committee was spent with members debating whether they could survey people (outside and inside government).

Tom Susman referenced the 2014-2016 committee's report on fees and asked that this committee ask the Director of OMB to have someone come to the next meeting to discuss fees and where OMB stands with the previous committee's recommendations regarding fees. He also noted that the previous committee reviewed proactive disclosure but didn't make a recommendation. He suggested maybe it's up to this committee to figure out a way to confront 508 compliance if that is an issue.

Mr. Susman mentioned the section of the previous committee's report that discussed how agencies do not follow Office of Information Policy guidance and asked what the committee could do about that.

Ms. Pustay echoed what Mr. Moulton and Mr. Jones said about the committee's meetings schedule and added that it is important to be more practical this time in what the committee looks at, not just theoretical or spending time on surveys or discussion without a focal point.

Chris Knox mentioned that technology is a subcomponent of all these activities. He stated that a perfect technological solution, or the funding for that solution, may not exist. He encouraged the committee to consider how technology can make all these issues more efficient and effective.

Mr. Holzerland added to the public comment from Mr. Howard, stating that it is unclear what the actual issue is with technology. He suggested breaking it down into specific issues, rather than an overarching theme.

James Valvo addressed the theme of awareness and commitment. He said with the change of presidential administration the committee is going to have to assess the new administrations awareness and commitment to FOIA and possibly getting some product out of the committee in the first few months of the new administration.

Ms. Ebadolahi discussed the importance of internal deadlines, and said he agreed with Mr. Jones that the committee should strive to get more products out.

Ms. Kwoka echoed Mr. Susman's point regarding proactive disclosure, that the previous committee researched the issue and the current committee could continue work on this topic rather than changing course and could come up with a recommendation for that topic.

Mr. Perel said he agrees with the proposal to bring in outside groups (e.g. OMB) to gather information that can inform the committee's recommendations.

Mr. Jones mentioned that the previous committee reviewed 508 compliance, which seems to be a barrier to proactive disclosure. He also mentioned that searching technology could be a topic the committee looks at. Agencies are diverse in how they search and the committee could look into best practices.

Mr. Susman mentioned that there is a lot of litigation against agencies involving searches. He said it seems that this is a systemic problem and if the committee could come up with something that could assist agencies and requesters during the search process agencies could save a lot of time and money. He also mentioned the sanctions provision in the FOIA which has never been used. He asked if there is anything from the state level or elsewhere that could be a lesson learned regarding the use of sanctions for FOIA request processing. Mr. Susman also suggested making recommendations for agencies where there is clear data on how FOIA programs at those agencies could be improved.

Ms. Stewart asked if there were additional suggestions for how the committee could be effective in tackling the issues in the next two years, in addition to the ones on the white board. She asked what committee members are interested in reviewing and recapped some of the suggestions.

Mr. Moulton clarified that his recommendation was to have multiple subcommittees but not to have them wait until the final meeting to make a recommendation.

Mr. Jones stated that he thought the committee should think about and discuss recommendations for subcommittee topics, rather than making a snap judgment and voting at this meeting.

Ms. Stewart recommended using the rest of the meeting to brainstorm about potential subcommittee topics. *(see attachment 5)*

Mr. Susman recommended a 508 subcommittee, since he said it seems to be at the heart of the proactive disclosure issue.

Ms. Pustay recommended having the Access Board come and brief the committee regarding Section 508, prior to making it a subcommittee topic.

Mr. Jones mentioned that the Open Government National Action Plan may have a committee working on issues of 508 already.

Mr. Moulton recommended the previous work of the proactive disclosure subcommittee could be continued and possibly set up agency specific subcommittee, which could produce target recommendations.

Ms. McCall suggested a subcommittee on commitment and awareness, encouraging more engagement and commitment of political appointees and high level management.

Mr. Moulton tied together Ms. McCall's recommendation and Mr. Valvo's recommendation suggesting the committee create something for the new administration within the next 6 months.

Ms. Stewart did a read out of the suggested topics.

Mr. Jones reiterated his earlier point that committee shouldn't divorce itself from actual FOIA requesters and requests. He said the committee can act as firefighters, and tackle issues as they come up, creating more flexible subcommittees.

Ms. Pustay agreed with Mr. Jones, and suggested making topics more requester-focused, perhaps using existing best practices. She said what happened with the last committee was a lot of discussion but little action, and she hopes to avoid that with this committee.

Mr. Holzerland cautioned against looking at individual request issues, and getting too much into the weeds.

Ms. Pustay agreed and said the committee has to find the sweet spot where it's not too individual an issue, but it also not too big to the point where it's theoretical.

Raynell Lazier asked for clarification whether or not the previous subcommittee on oversight and accountability would be similar to the suggestion that was currently on the board titled awareness and commitment.

Mr. Jones confirmed that it would be the same topic.

Mr. Pritzker suggested that the committee start work by approaching the Access Board to discuss 508 compliance. He read from a section from the 2014-2016 report regarding oversight and accountability and suggested following up whether the recent legislation will make a difference in regards to oversight and accountability.

Stephanie Carr stated that 508 compliance is not the only issue preventing proactive disclosure. She said that proactive disclosure requires commitment, money, and new skill sets for FOIA processors.

Mr. Pritzker recommended having hearings for the public to testify to the committee about issues they are experiencing with the FOIA.

Ms. Foster offered suggestions of how hearings could work.

Ms. Pustay cautioned against doing hearings/surveys because the committee members know the areas where FOIA needs improvement, and asking for more surveys or hearings could send the committee down a rabbit hole.

Mr. Holzerland suggested using the OGIS logs to identify the issues requesters encounter in the FOIA process.

Ms. Gramian explained that the non-government members of the committee are the public's representative and can speak on behalf of requesters.

Mr. Susman suggested a compromise, let the subcommittee conduct hearings if they want to hear more from the public.

Ms. McCall stated that she doesn't want the committee to come up with recommendations that do not make a request for additional funding. She explained that more reporting requirements were included in the new legislation, so now money that would have been spent on processing will be diverted to reporting.

Mr. Susman responded to Ms. McCall's comments by asking if there are metrics or analytics that can be created to tell whether the funds allocated to FOIA are yielding value. He said that agencies need to come to Congress with a justification for the request for more money.

Ms. McCall responded saying that the committee can bake it into the recommendations, so if there is a recommendation for proactive disclosure, include funding for technology and staff.

Ms. Foster circled back to earlier comments Ms. McCall made, stating that there is no incentive for Federal employees to do a good job, the better a FOIA office operates, the less money they get. She asked how can the committee could recognize agencies that are being innovative. She said the committee also has to stop comparing agencies with the same yard stick, since agencies' missions are diverse. She said the committee should be cautious with how government uses metrics, to make sure they are applicable.

Mr. Holzerland brought to the attention of the committee that Federal employees are limited in what they can recommend to Congress, and that is something the committee is going to have to address when it comes time to make recommendations.

The committee at large discussed whether they wanted to take a vote on subcommittees. Ms. Gramian said that voting was originally set for the October meeting, but it was up to the committee. Mr. Moulton said that the committee should get started on work during the next 3 months so they can come to the committee with more information. There was discussion about whether the 2014-2016 committee recommendations are now either with the Archivist or with OMB.

Mr. Susman made a motion to reaffirm the committee's support for the recommendations of the last committee concerning OMB's development of updated FOIA fee guidelines, and that the Archivist respectfully submit the recommendations to OMB so OMB can come to the next committee meeting to discuss how OMB intends to implement the recommendations.

Ms. Pustay recommended wording changes to Mr. Susman's motion.

Ms. Gramian asked for members on the phone to email their votes regarding Mr. Susman's motion, and took a show of hands vote in the room. The motion passed.

Mr. Moulton moved that he, and a few other volunteers, reach out to the Access Board and the NAP working group regarding 508 compliance and report back to the committee at the next

meeting. Ms. Pustay volunteered to assist. Ms. Gramian took a vote in the room, and members on the phone submitted email votes. The motion passed.

Sean Moulton moved that the committee meet more frequently than every 3 months. Ms. Pustay said that the end of September is a tough time for the agencies to meet because it is the end of the fiscal year. Mr. Jones stated that the committee members could work on these issues in the interim and report to the committee at large in October. Mr. Moulton withdrew his motion. Ms. Gramian asked that the committee discuss the issue at the October 25, 2016 meeting, and decide then if the committee wants to meet more than 4 times a year.

Ms. Gramian opened the floor to public comments.
   - No comments.

Ms. Gramian thanked members for their work. She mentioned that at the next meeting on October 25, 2016, the committee would choose subcommittees. Ms. Gramian adjourned the meeting.

I certify that, to the best of my knowledge, the foregoing minutes are accurate and complete on October 25, 2016.

_____
Kate Russ
Designated Federal Officer, 2016-2018 Term

_____
Nikki Gramian
Acting Chair

<p style="text-align:center">**Attachment 1**</p>

Brainstorming

Prompt #1 I want a FOIA policy/process/law that_____.

Theme 1: Timeliness (efficient/effective)

- Requires agencies to respond to referrals and consultations within a set time frame
- Is capable of providing timely responses to requests to the maximum extent consistent with security and privacy concerns; but which provides an efficient dispute resolution process where the request is problematic
- Increases efficiency in order to facilitate maximum disclosure with minimal delay
- Is practical and manageable ensuring speedy response
- Works for the public
- No requests takes longer than a year to process
- Addresses the statutory response time
- Provides access to records quickly and efficiently
- Provides records in a timely and effective manner

Theme 2: Technology

- Allows for e-payment for FOIA fees
- Provides greater alternatives to costly litigation, such as binding arbitration
- Creates or makes documents available digitally
- Creates a centralized government database to track/search requesters and their requests
- FOIA offices can search for documents and efficiently and universally
- Does a better job with fundamental issues—records — management, search capability of authority to make finding and disclosing records easier and faster
- Uses technology in many ways to facilitate the process, from finding requested records to processing them
- Makes managing the proliferation of electronic records work better
- Is equipped for the future by using technology
- Where the vast majority of FOIA releases are posted online

Theme 3: Compliance

- Where FOIA shops and attorneys don't "knee jerk" withhold
- Holds agencies and officials more responsible for efficient FOIA administration

- Mandates FOIA training for all senior executives in the Federal government so that they will make it a priority
- Manages the process—--resources and performance tracking goals—to become more efficient over time
- Requires, rather than encourages, agency compliance

Theme 4: Resources

- Creates a FOIA agency that handles all requests
- Ensures adequate resources for each agency and then imposes sanctions on agencies that do no search or produce in timely fashion
- Costs less/is simpler to administer
- Gives agencies adequate funding, staffing, and technological resources to succeed
- Creates centralized government resources to support FOIA offices
- Provides the ability to talk to someone directly about FOIA or about info and how it may be kept prior to submitting a request

Theme 5: Proactive Disclosure

- Requires affirmative/proactive disclosure of frequently requested records, rather than frequently requested individual records
- Seeks to proactively disclose information rather than waiting for requests
- Reduces the need to make individual requests because so much of what is of interest is available proactively
- Gets more information to public faster without requiring FOIA requests
- Provides proactive records
- Addresses other processes that may allow access, but reduce the number of requests under FOIA
- Gets information to requesters faster and more consistently
- Requires publication of agency FOIA logs
- Produces more information as a matter of course (less nuanced)

Theme 6: Customer Service/Partnership

- Reduces the often adversarial nature of the FOIA process
- Improves customer service and make the process less adversarial
- Allows a FOIA requester to fully understand how the process is working for her (transparency in the process)
- Encourages good faith on the part of both agency officials and requesters
- Creates/fosters closer public/private partnership and a more amicable environment
- Is clear and understandable to the average citizen

Theme 7: Law Change

- Realistically reflects the time needed for an agency to respond to a FOIA request
- Perhaps caps the number of requests a requester submits so that one single requester doesn't flood the system submitting 50 requests per month—unfair to other requesters

Attachment 2

Brainstorming

Prompt #2 The hardest problem in FOIA is _____.

Theme 1: Commitment and Awareness

- DOJ Civil Division defending bad agency positions in court
- The fact that the vast majority of people working within agencies do not think of FOIA as a primary function of their job. FOIA officers often must rely on these others for record production
- Ensuring all Federal employees understand the law and their FOIA obligations
- FOIA requesters understanding the FOIA process
- Excessive use of some of the exemptions—an agency for staff preference for withholding, even with minimal justification
- Getting docs from document holders in a timely manner
- Keeping leadership from reducing the staff
- Lack of "buy-in" by agency management
- Political will/consequences of not following through
- For many agencies FOIA is lowest priority which means no resources and slow actions by program staff
- Lack of strong leadership and authority to oversee agencies and demand changes/ compliance
- Lack if compliance enforcement mechanism
- People: uses data scientists/developers IT professional to help process FOIA, get right people in the conversation, right people in the room
- Government lawyers trying to justify their pay grade
- Getting high-level (political) commitment to improve administration (above FOIA Officer, below White House)
- Convincing program offices that part of the their core mission is responding to requests for records
- Redactions and withholdings that are unsupported but take too long to get a court to review
- Agency (political) leadership wrong expectations regarding their role in the process
- No high level entity that agencies listen to advocating for quicker release of much more information

Theme 2: Delays

- It takes too long to get records, with requesters unclear about why delays are occurring
- Meeting FOIA response deadlines--20 days/30 days
- Getting back to requesters quickly enough
- How to identify the most valuable records to proactively disclose at each agency
- Delay

Theme 3: Volume

- Managing copious amounts of electronic records in context of FOIA searches for responding to records
- Requesters who bury agencies in frequent, very broad requests
- Case processing with a declining budget
- Managing request expectations
- Explosion of records
- Sufficient searches of email/electronic records
- Inability to effectively search an agency's records

Theme 4: Funding

- Funding/resources
- How well money is being spent on FOIA programs
- Ever increasing numbers of requests being handled by shrinking FOIA offices
- Lack of resources
- No funding priority, by anyone: Congress, OMB, agency leadership
- Too few resources relating to volume of requests
- For some agencies, coping with an overwhelming number of requests, with limited staff and funding
- Persuading Congress and agencies to allocate adequate resources

Theme 5: Technology

- Keeping pace with technology to ensure responsive records are located by government and when publically released, make accessible
- Technology, technology, technology—to assist with searches, database management and tracking, and producing records electronically
- Wide dispersion of records throughout agencies, voluminous e-mail making it difficult to capture what is responsive
- Efficiency in releasing previously released records
- Lack of resources (staff and technology) to keep up with demand
- Maximizing proactive disclosure in the face of 508
- Addressing records retention policies and maintenance in the electronic environment
- Inadequate systems/technology making receiving data and docs more difficult than it has to be

- Poor records management makes records hard to find, demand review and hand redaction, paper disclosure
- How to harness technology to manage ever-increasing volumes of records and requests for access to those records

Attachment 3

Hardest Problems in FOIA Brainstorming:

- Need more money
- Simple system so it doesn't cost so much
- The cost of technology—keeping it useful
- Technology at the creation of records (not just the end)
- Where can we create efficiencies? Do more with the little we have
- Proliferation of electronic records
- Government is not good at technology (doesn't have a good track record)
- Every agency doing things differently—need to pool resources- common approach
- Eliminating work by talking with requesters—more communication
- Proactive Disclosures—effort?
- Frequently requested records—design records for release with disclosure in mind
- 508 compliance of proactive disclosure
- Volume of requests from Industry
- Connections to data and enterprise data
- Buy in from agency management to build resources, etc
- No national will to do the technology better in FOIA
- FOIA portal—the issues in the money or the technology but the political will
- Requests that take years to deny—no consequences
- Efficiency lost in records that have already been disclosed—requesters and agencies do know its already been processed
- People- get the right people in the room—talk to data/technologists/ software engineers
- FOIA used for other reasons—immigration/veterans, etc—better serve people who need records for other reasons

Attachment 4

How can the Committee be effective in tackling the hardest issues?:

- Focus on funding—throwing money at the wrong things—i.e., reporting
- Too focused on high-level issues—not focused on the actual requests/requesters
- Highlight positive and negative stories
- Focus on solutions, not fact finding—we know the problems—fix or improve the problems
- Focus on what's working and what's not working
- Next meeting: bring OMB/OSTP back and see what is effective for recommendations (have AOTUS invite them)
- Technology to solve Proactive Disclosure? Confronting the 508 issue
- Committee needs to be more practical—too much discussion without an end focal point
- Technology— how can it make other issues more efficient and effective
- Identifying the technology problem with FOIA
- Awareness and commitment in new administration
- Build on work of proactive disclosure of previous committee
- If we can solve 508 compliance—not a concrete solution—need agreement
- Investigating use of sanctions
- More money—how do we show results, some agencies do a better job, we don't have a choice—drill down to efficiencies
- How to recognize agencies that are doing innovative things
- Find a way to stop comparing agencies the same way—they are all different
- Committee should recommend funding
- Focus on recommendations earlier, several at a time, maybe subcommittee then recommendations then move to next issue

How should the committee's work be organized over the next two years?

- Shouldn't have to wait until the end of the committee term to submit recommendations
- Meet more often, a long 3 months between meetings
- Consider changing the schedule to meet more frequently
- Too much on investigative process and not on recommendation—too much time surveying

- Internal committee deadlines for committee accountability
- More frequent interaction
- Every meeting—FOIA requesters and FOIA professionals (invite to hear)
- Committee to set up public hearing—advertise it like a workshop/ problems they've had, other practical problems
- OGIS logs—document the problems
- No end to the bad stories—but still might be useful to subcommittees
- What do we do with guidance not followed
- Will need to gather information – OMB/OSTP involvement
- Fact finding—use information from the agencies represented in the committee
- Invite OMB to brief on Fee recommendations with AOTUS
- Reaffirm fees and respectfully ask AOTUS to send to OMB

Attachment 5

Potential Topics for Subcommittees:

- 508 Compliance
  - Possibly ask Access Board to brief committee before decision
  - NAP group on 508 compliance already
- Proactive Disclosure
- Agency Specific Subcommittees—on a rolling basis
- Awareness and Commitment—leadership buy-in
  - High level appointees
  - Welcome packet at change of administration
- Best Practices—Committee on Requesters
- Actual FOIAs—practical emphasis