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

Meeting Minutes – January 26, 2017

The FOIA Advisory Committee convened at 10 a.m. on Tuesday, January 26, 2017 in the William G. McGowan Theater at the National Archives Building, 700 Pennsylvania Avenue, N.W., Washington, D.C. 20408-0001.

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

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

Committee members present in the Archivist Reception Room:

- Alina Semo Chair, National Archives and Records Administration
- Sarah Kotler, Food and Drug Administration
- Chris Knox, Deloitte
- David Pritzker, Administrative Conference of the United States
- Ginger McCall, Department of Labor
- 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
- Stephanie Carr, Department of Defense
- Thomas Susman, American Bar Association
- Lynn Walsh, Society for Professional Journalists/ NBC7

Committee members on the phone:

- James Hershberg, George Washington University
- Margaret Kwoka, University of Denver, Strum College of Law
- Sean Moulton, Project on Government Oversight

Committee members absent from the meeting:
- Helen Foster, Department of Housing and Urban Development
- Mitra Ebadolahi, American Civil Liberties Union

Committee members awaiting clearance to participate:
- Logan Perel, Department of Treasury

Others present or participating in the meeting:
- Phil Ashlock, General Services Administration
- Michael Marquis, Health and Human Services
- Amy Bennett, NARA, Committee Designated Federal Officer
- Alex Howard, Sunlight Foundation

Introductions and Announcements

Committee Chair Alina Semo opened the meeting by introducing herself as the new Director of the Office of Government Information Services (OGIS) and thanking Nikki Gramian for serving as the Acting Chair of the Committee while the position of Director of OGIS was open. Ms. Semo then reported that she has followed up with the Office of Management and Budget (OMB) regarding the recommendation the Committee made during its first term that OMB update its Freedom of Information Act (FOIA) fee guidelines; she reported that OMB has received the recommendation but had not taken any action. Ms. Semo went on to introduce the Archivist of the United States (AOTUS) David Ferriero, who offered opening remarks.

Mr. Ferriero noted that the Committee embodies the spirit of open government. He also discussed the appointment of Ms. Semo and expressed gratitude to Ms. Gramian for stepping up twice to serve as the OGIS Acting Director. Mr. Ferriero also announced the appointment of a new Committee member, Ms. Sarah Kotler, who is the Director of the Division of Freedom of Information at the United States Food and Drug Administration (FDA). Mr. Ferriero closed his remarks by inviting the audience to return to the William G. McGowan Theater on Monday, March 13 to join in the National Archives' celebration of Sunshine Week.

Ms. Semo thanked Mr. Ferriero and also welcomed Ms. Kotler. Ms. Semo noted Logan Perel had recently left the Department of Homeland Security to take a position at the Department of Treasury and that Mr. Perel was not participating on the Committee pending approval by leadership at Treasury. Ms. Semo then provided background information about the Committee and its work. The Committee spent the next few minutes introducing themselves and their affiliations. Committee members Helen Foster and Mitra Ebadolahi were unable to attend or participate in the meeting.

Administration

Ms. Semo provided information on how to stay informed about the Committee's work through the Committee's website, as well as through OGIS's blog and Twitter account, and outlined the meeting agenda.

Ms. Semo directed the Committee's attention to the October 25, 2016 meeting minutes. The Committee voted to adopt the minutes.

Ms. Semo then explained that the remainder of the meeting would consist of updates from the Committee's three subcommittees and noted that two of the updates would include presentations by guest speakers.

Proactive Disclosure and Accessibility Subcommittee Update

Ms. Kwoka reported that it had taken the subcommittee some time to begin its work due to administrative issues, but that they had held their first meeting to organize their plans for the work. She explained that their plan is to continue to build on the work done by the Proactive Disclosures Subcommittee during its first term (2014 – 2016) and that they intend to focus on two areas: how agencies can identify what to proactively disclose, and the logistics, including barriers posed by accessibility requirements, of making proactive disclosures.

Ms. Kwoka explained that the subcommittee plans to engage in case studies of agencies that they have reason to believe have strong proactive disclosure policies and practices. She continued to say that they would ask these agencies about both how the agency sets priorities for proactive disclosures and how they use technology to make documents accessible to people with disabilities.

Ms. Kwoka said that the subcommittee has identified five agencies to study and that the subcommittee hopes these case studies will help identify best practices and recommendations that can be discussed and voted on by the Committee. She also said that the subcommittee hopes to interview some of the identified agencies by the next Committee meeting.

Ms. Kotler said that she had nothing to add to Ms. Kwoka's update and then opened the floor for questions. Mr. Jones stated that he hopes the subcommittee will be able to produce something that helps agencies post records released under FOIA by providing them with more information about how other agencies are making the records accessible. Mr. Hershberg added that he has circulated a proposal regarding the State Department, which is one of the agencies that the subcommittee plans to contact. Mr. Hershberg stated that the proposal relates to proactive disclosure of materials that were redacted due to national security concerns from published material in the Foreign Relations of the United States series, which is published by the State Department. He continued to say that he had informally shared the proposal with the chairs of the historical advisory Committees of the State Department and the Central Intelligence Agency (CIA) and that they responded positively and committed to investigating the possibility.

Ms. Semo then turned the floor over to Ms. Kotler, who introduced the subcommittee's guest speaker, Phillip Ashlock. Ms. Kotler explained that Mr. Ashlock is a technologist based in Washington, DC building digital civic infrastructure to support open government, civic engagement, and economic development. Ms. Kotler continued to say that Mr. Ashlock is currently the chief architect at Data.gov, where he manages a federated platform for publishing open data, and APIs across government. Ms. Kotler also said that Mr. Ashlock led the development of the Open 311 standard for interacting with government through an open feedback channel, and served as a presidential innovation fellow, working with the GSA and the White House office of digital strategy on MyUSA.

Mr. Ashlock asked if presentation slides from a memory stick could be shown on the projection screen. A member of the OGIS staff took the memory stick and went to the back of the auditorium. While waiting for the slides, Mr. Ashlock moved ahead and explained that he would begin his presentation by giving an overview of Data.gov and the policies that were developed to help agencies implement open data. He said that Data.gov launched in 2009 and has been the vehicle for implementing a number of subsequent open data and open government policies, including the Executive Order on Open Data – which is referred to as M-13-13.

Mr. Ashlock explained that M-13-13 substantially changed the operation of Data.gov: from Data.gov's launch in 2009 until the issuance of M-13-13, Data.gov acted as a front facing portal that provided the public to access to whatever datasets agencies may have provided. The focus after the initial launch of the project, Mr. Ashlock said, was to ask agencies to publish higher priority datasets. That process, Mr. Ashlock explained, created a bottleneck that made it harder for agencies to publish and make data available via Data.gov. M-13-13, he said, made the process more decentralized by giving agencies the responsibility to inventory all of their datasets – public and nonpublic – using a common metadata schema. He stated that this approach allows Data.gov to pull and present metadata about agencies' datasets in a scalable and systematic way. He continued to say that the decentralized process allowed agencies to take responsibility and be more proactive about making sure that datasets were included in the inventory, and – therefore – discoverable through Data.gov and using search engines.

Mr. Ashlock added that while the approach to implementing M-13-13 gave agencies more autonomy, there has also been a quarterly review process as part of a Cross-Agency Priority (CAP) Goal on open data. He said that the results of the quarterly review are publicly available on a dashboard that tracks agencies' implementation of the policy.

Mr. Ashlock also said that they have been working to add feedback mechanisms to Data.gov. He explained that because Data.gov serves as the public interface for people who are looking for government data, they often hear from members of the public who are looking for a particular dataset or reporting a problem with a particular dataset. Mr. Ashlock went on to say that Data.gov has been trying to address this kind of feedback in a more systematic way and involve agencies in the process from the very beginning. One method, he explained, was to create the Data.gov help desk, which can be used to both request datasets and report issues. He also said that users can report issues with a dataset using a button that appears on the top right-hand corner of every dataset page. He added that there is also a form to request datasets and that all of the feedback they receive is entered into a customer relationship management (CRM) system for

Data.gov staff to evaluate and route to agencies as needed. Mr. Ashlock also said that currently it can take some work to make sure that the issue is routed to the correct person at the agency, but that they are working on updating the system so that agencies have direct access, meaning that the agency can receive notifications about issues and respond themselves.

At this point in the presentation the slides accompanying the presentation appeared and Mr. Ashlock was given a controller to advance the slides. As he moved through the slides, he noted that all of the guidance on implementing M-13-13 is available on the Project Open Data website, which is built as an open source project on GitHub. He explained that using GitHub has allowed them to invite public participation and feedback on guidance related to things like changes in the metadata schema. Mr. Ashlock also explained that only metadata about nonpublic datasets are available via Data.gov and that the pages for nonpublic datasets include a disclaimer stating that the metadata is listed only to let the public know that the datasets exist. He added that the datasets are nonpublic because the agency assesses that some or all of the data is exempt from release under FOIA, and that agencies can also redact some of the metadata if it is also exempt from release under FOIA. Additionally, Mr. Ashlock said that Data.gov is able to make non-federal government data that uses Data.gov's metadata schema available and discoverable.

Mr. Ashlock then showed examples of Data.gov's feedback mechanisms and stated that the status of all of the requests are visible to the public and explained the workflow of the requests.

Mr. Ashlock next discussed a Department of Health and Human Services project called "Demand-Driven Open Data," which is focused on creating a more robust strategy for the demand side of data requests. He explained that users are asked to describe what they could accomplish with a new data release or an improvement to an existing dataset.

Mr. Ashlock said that they are also working on developing richer metadata, and added that there are existing working groups in government working on the issue and some international standards under development. He also noted that Data.gov follows a lot of the metadata standards and approaches that are developed in the private sector as well, particularly with search engines, and schema.org – which is a consortium of search engines helping to provide standards to improve the discoverability and utility of information on the web. Mr. Ashlock added that only a few days prior Google announced that they are treating the metadata schema as a special content type, which means that they are incorporating additional functionality to provide richer search results.

Mr. Ashlock then invited questions from the audience.

Mr. Jones asked if it was possible for an agency to make a dataset of all of its FOIA responses for one year available via Data.gov. Mr. Ashlock responded by asking if Mr. Jones meant a dataset that included the metadata of about FOIA requests. Mr. Jones responded that he also meant the documents released under FOIA. Mr. Ashlock responded that he did not know of any reason an agency could not do that and clarified that Data.gov is a metadata catalog, meaning that it helps the public find datasets but does not host the datasets. Mr. Ashlock continued to say that the agencies would still need to host the dataset and that they are looking to help provide agencies with better solutions for that as well. Mr. Jones also asked Mr. Ashlock if he knows of

any agencies that were already making metadata about their FOIA responses available on Data.gov and Mr. Ashlock responded that he has seen datasets that are a spreadsheet listing requests made and the status of the request, but did not know of anything that clearly identifies a dataset as being made available under FOIA.

Mr. Howard asked Mr. Ashlock why the Project Open Data Dashboard had not been updated since August 2016 and if the reason there has not been an update is due to capacity or staffing. Mr. Ashlock responded that there should be updated information on the Dashboard through November 2016. Mr. Howard answered that the data is not there and Mr. Ashlock said that he has no other good explanation for the delay other than capacity. He said that there are some technical hurdles that they continue to deal with and that the timeline for the reviews has been driven by staff availability. Mr. Howard asked if there is still staff in the White House and Office of Management and Budget doing this work, and Mr. Ashlock responded affirmatively.

Mr. Howard also asked Mr. Ashlock how many of the agencies included in the Chief Financial Officer Act he would say have posted a complete enterprise data inventory, including data about nonpublic datasets. Mr. Ashlock responded that it is something they try to measure, but it is difficult to answer. Mr. Ashlock added that there are a number of different methodologies that could be more robust than the methods they are currently using to determine whether an agency's inventory is complete, but that there is not necessarily one test that all agencies are using to judge whether the inventory is complete. Mr. Howard noted that his organization, the Sunlight Foundation, had attempted to assess the completeness of the inventories and still had not completed its work. Mr. Ashlock responded that some agencies, in particular the Department of Transportation, have developed very robust strategies to assess the completeness of their inventory.

Mr. Howard also asked Mr. Ashlock if there has been any discussion about the prospect of agencies publishing machine readable datasets that are requested through FOIA on Data.gov and connecting the requests through a redesigned FOIA.gov. Mr. Howard explained that the purpose of linking the two would be so that people can understand the arc of the records request from the incoming requestor to where the dataset actually ended up on the internet. Mr. Ashlock responded that the idea has been brought up a number of times but there is not any formal arrangement in place to make it happen.

Mr. Susman asked Mr. Ashlock if he can identify the greatest obstacles agencies face to posting datasets. Mr. Ashlock responded that he can point to two major obstacles. The first obstacle for agencies that have a strong history of posting data, it has been hard for them to adopt the common metadata standard and other changes that have come with the adoption of a comprehensive open data strategy; agencies that are newer to the idea of publishing data have an easier time because they can use the tools Data.gov has provided and can begin their work in a consistent way. The second obstacle, Mr. Ashlock said, is the burden of hosting the data without a contracting burden, or other bureaucratic burden to go through to put a new file online.

Mr. Susman also asked Mr. Ashlock whether they review the data to ensure that it meets current accessibility standards for people with disabilities. Mr. Ashlock responded that they do not play a

role in reviewing the files for accessibility. He added that the files should automatically meet the accessibility standards because they are machine-readable data.

Mr. Jones asked if Mr. Ashlock could walk him through what steps they would need to take to have an index of all FOIA releases from 2010 to present online. Mr. Ashlock responded that each agency would need to host the data and that while it would all need to use the same metadata schema, the management process at each agency varies. Mr. Ashlock added that they do not know the management process at each agency, but if someone from a program office contacts them for help, they immediately put the program person in touch with the agency's open data lead. Mr. Ashlock also added that they make sure the data is listed in the data inventory and that they do provide some of the tools that some agencies are using to manage the process and make data available. Mr. Jones stated his understanding from Mr. Ashlock's response is that FOIA people should be talking to the data people within their agency to make FOIA releases available via Data.gov.

Ms. Semo thanked Mr. Ashlock for his presentation and asked if the subcommittee chairs had anything else to add to the discussion.

Mr. Pritzker asked if the slides from the presentation would be posted. Ms. Semo responded that they would be posted on the FOIA Advisory Committee web pages, but that there might be a slight delay in posting.

Ms. Semo noted that the meeting was running ahead of schedule and that they would next hear an update and a presentation from the Efficiencies and Resources Subcommittee.

Efficiencies and Resources Subcommittee Update

Ms. Semo noted that resources, or more commonly a lack of resources, is commonly cited as a primary factor in FOIA processing delays, and that the Committee had expressed an interest in identifying and promoting best practices to overcome systemic issues in the administration of FOIA. She then turned the floor over to the subcommittee's co-chairs, Ms. McCall and Mr. Knox, to provide updates about the subcommittee's work and introduce the guest speaker.

Mr. Knox explained that the subcommittee experienced some delays in beginning its work due to the election and holidays, but that they had held their first meeting and established a goal of developing recommendations for the efficient use of resources. He said that the subcommittee's plan is to begin by using qualitative and quantitative measures to identify agencies who seem to make the most efficient use of their resources, and to identify elements that might contribute to a lack of success. He added that the subcommittee intends to utilize data from several sources to accomplish this task, including annual FOIA reports and OGIS compliance reviews, and that they will consider factors like the complexity of requests, the FOIA program's budget, and accessibility of technology.

Mr. Knox said that the subcommittee plans to meet again soon to discuss the data and begin to identify agencies that seem to be making the most efficient use of their resources.

Ms. McCall then introduced the guest speaker, Mr. Michael Marquis of the Department of Health and Human Services (HHS). Ms. McCall noted that Mr. Marquis joined the HHS office of assistant secretary for public affairs in April 2014 as the departmental Freedom of Information Act director and has served for 29 years in the federal government. She added that from 2004 to 2014, he served as the director of HHS Centers for Medicare and Medicaid Services FOIA Office, and that for the past 13 years, he has provided day-to-day leadership, management, and oversight within the HHS FOIA program. She also explained that Mr. Marquis implemented process improvements ranging from staffing, request workflows, and technology enhancements that resulted in significant backlog reductions that exceeded the 10% goal for each staff he managed from 2010 to 2016. She also added that prior to joining the HHS FOIA program, Mr. Marquis was the FOIA officer at the USDA animal and plant health inspection service for eight years, and that he holds a Master of Science in applied management from the University of Maryland and a Bachelor of Science in business administration and health services management from Towson State University.

Mr. Marquis explained that his background is in management and that he was recruited by a senior director at the Animal Plant Health Inspection Service to serve as the FOIA Officer because of his reputation as a "problem solver." He said he asked the senior director what the problem was with FOIA and that he was told, "backlog."

Mr. Marquis went on to say that he has since spent 20 years working in FOIA and has managed three FOIA units and in his experience backlogs are systematically linked to many issues. He explained to solve a backlog, a manger must be willing to re-evaluate and reformulate the office's operations. He also emphasized that it is important to begin to identify critical pieces of the operation that need immediate attention.

Mr. Marquis then explained that he has found four factors to be critical in order to effectively advocate for his programs: accountability, leadership support, strategic intent, and sense of urgency. He added that the first step to effectively advocating for a FOIA program is to examine the workflow and review key performance indicators. The next step, Mr. Marquis stated, is to develop goals to share with senior leadership with the aim of developing their support. He said it is important to communicate your vision for the program with your staff and to create a sense of urgency to continuously implement improvements. He continued to explain that the final step is to celebrate the program's accomplishments and reinforce the improvements made.

Once the initial steps have been taken, Mr. Marquis said, a FOIA manager is prepared to begin advocating for his or her program. He explained that by "advocate," he means taking an active approach to influence outcomes that effect how the program is administered and to ensure that the program can meet the public's needs. He added that the FOIA program is intended to serve the needs of the public and that the public should be viewed as the program's ultimate boss.

Mr. Marquis explained that advocacy for a FOIA program begins with a succinct message that can be clearly communicated to senior management, the FOIA staff, and the public. He said that a FOIA manager should develop a strategic plan that identifies key objectives and corresponding short and long-term goals. He then gave examples of objectives included in HHS's strategic plan

and noted that meeting these objectives require active management with a constant focus on key performance metrics.

Mr. Marquis also spoke about creating a culture of accountability throughout the lifecycle of FOIA requests, appeals and litigation. He suggested engaging senior leadership in improving the program by asking that they communicate the importance of the FOIA program across the agency.

Mr. Marquis also spoke about the importance of involving the FOIA office staff in creating efficient and effective workflows and working with them to identify and eliminate any redundancies in the process. He added that a FOIA manager should use a tracking system to keep up with key statistics like processing time and backlog reduction efforts. He also explained how the sense of urgency he created as the FOIA director at the Centers for Medicare and Medicaid Services resulted in across-the-board improvements in processing times and backlog reductions over many consecutive years. He explained that he created this sense of urgency through daily communication with the staff about their role in the success of the program. He also said that he would personally encourage his staff members to close out the oldest cases in their queue.

Mr. Marquis then spoke about the importance of speaking with customers and working with them to identify FOIA priorities. He noted that the burden created by an overly broad FOIA request can be substantially reduced as the result of a phone call between the FOIA office and the requester.

Mr. Marquis ended his presentation by announcing that his office is planning to begin posting quarterly reports on all pending open FOIA requests. The idea behind posting the report, he said, is to improve public understanding of the office's work and senior leadership's knowledge about certain burdens. He then opened the floor up for questions from the Committee and the audience.

Mr. Pritzker asked Mr. Marquis what reasons his staff frequently cite for the age of old FOIA cases. Mr. Marquis responded that old cases generally involve a voluminous amount of responsive records. Mr. Marquis added that during weekly staff meetings he shares data with his FOIA staff, including the dates of the oldest FOIA requests. He also noted that he relies heavily on his tracking system to oversee the office's work and sets clear expectations for each member of the staff.

Ms. Carr asked Mr. Marquis about how his office conducts searches. Mr. Marquis responded that HHS has a decentralized FOIA program, meaning that his office, which is located in the Office of the Secretary, uses a tracking system to transfer requests to programs or data offices the FOIA office believes might have responsive records. He added that requests for email are generally carried out by the agency's Information Technology (IT) department. The goal, Mr. Marquis added, is to have all FOIA requests logged into their tracking system and tasked for search with 24 hours of receipt.

Mr. Bekesha asked Mr. Marquis about the average processing time for simple, complex and expedited tracks, and what Mr. Marquis' goals are given current resources and staff. Mr. Marquis responded that ideally all requests should be responded to within the 20-day statutory deadline.

He added that he does not know the precise average processing times off of the top of his head, but that the goal is to drive down each of the averages. He explained that he uses statistics like average processing time to identify particular issues at HHS's various FOIA offices. He also added that a backlog reduction effort that targets closing old requests will drive up the office's average processing time. Mr. Marquis said that the average time for processing simple requests in fiscal year 2016 is around 25–27 days. Mr. Bekesha followed up to ask about complex requests and Mr. Marquis responded that he hopes the quarterly reports about all of the pending FOIA cases that he intends to begin posting provide more insight into what the agency is accomplishing.

Mr. Susman pointed out that while FOIA programs report on the number of partial releases made, the amount of information released or withheld in a partial release – and the nature of the information withheld – can vary widely. Mr. Susman continued by asking Mr. Marquis about whether he uses any qualitative measures to judge the FOIA program's performance. Mr. Marquis responded that he has thought about the issue but does not know of a solution yet. Mr. Marquis continued to say that he once worked with an IT expert to respond to a request that involved a billion pieces of data and required 300 million redactions; he then pointed out that all of that work only resulted in one case being closed. Mr. Marquis then went on to explain that from an operational perspective, he uses his triage team to handle simple requests – including "no records," full denials and full releases—and this minimizes the number of requests that must be sent on to the processing team.

Ms. Eggleston asked Mr. Marquis what tools he uses to hold program offices accountable to providing the FOIA office with responsive records. Mr. Marquis responded that his office has set up automatic notifications that alert the program when they have missed the deadline for providing records. Mr. Marquis added that he stays in constant contact with his triage team to learn if programs are not providing records and intervenes as necessary with program leaders and senior leadership to receive a response.

Ms. McCall asked Mr. Marquis if he had encountered any resource issues with staff or technology, how those issues affected processing, and what he did to address these issues. Mr. Marquis responded that his approach is to ensure that the FOIA office's processes are as efficient as possible before asking management for additional staffing or resources. He added that he works with members of his staff to ensure they have proper training and to set clear expectations about their work performance. Ms. McCall followed up by asking Mr. Marquis whether he has asked for additional resources at any point. Mr. Marquis responded that he had identified a need for and asked for additional staff at the Centers for Medicare and Medicaid, but the positions were not allocated until after he left the office.

Mr. Susman asked Mr. Marquis if OGIS had been useful to Mr. Marquis in terms of providing dispute training, identifying efficiencies in the process, or resolving individual cases. Mr. Marquis responded that his staff does not receive many inquiries from OGIS about individual cases but that members of his staff have attended OGIS dispute resolution training courses.

Mr. Pritzker asked Mr. Marquis how he makes sure that cases that require another office to make a determination about the release of information are closed. Mr. Marquis said that his staff

generally asks program offices to let them know about any concerns about the possible disclosure of the information, but that only FOIA staff suggest redactions. He added that there have been instances where the program offices were hesitant to provide the FOIA office with records, and that in those instances, Mr. Marquis would pick up the phone to contact the program office and senior leadership as needed. He also said that program offices have become more cooperative over time because they trust the FOIA office to redact exempt information and that management of the office reviews all of the redactions to ensure that they are proper prior to disclosure.

Ms. Walsh asked Mr. Marquis what reasons FOIA staff cited for not wanting to call a requester to discuss the request. Mr. Marquis responded that the FOIA staff fear the discussion will be confrontational. He added that the conversation is not confrontational if the agency provides good customer service. Ms. Walsh followed up to ask if employees were being sent a message to not communicate or to only communicate via email. Mr. Marquis responded that he has not heard any messages like that and that he pushes his staff, particularly the triage team, to make contact with requesters. He said that he has even set up conference calls between the FOIA staff, the requester and staff from the program office to help improve understanding about the types of records that the program maintains and identify what specific records the requester would like to have processed.

Mr. Knox asked Mr. Marquis if he is manually evaluating the FOIA office's workflow or if there is a technology enabling the review. Mr. Knox also asked how Mr. Marquis is tracking the workflow. Mr. Marquis responded that as his office was acquiring a new tracking system, he worked with the vendor to ensure that the tool would match the office's workflow. Mr. Knox followed up to ask if Mr. Marquis can use the tool to know where every request is in the process. Mr. Marquis responded that he can see where all the requests are in the process, and, in response to further follow-up from Mr. Knox regarding whether Mr. Marquis reports this data, he responded that the quarterly reports he plans to begin posting on all open cases will not include this kind of granular detail.

Ms. McCall asked Mr. Marquis to clarify whether he worked with the tracking system's vendor to customize it for the FOIA office's needs, and Mr. Marquis responded that he was able to meet with the vendor to explain his workflow and to work with them to create customized status fields that matched the FOIA program's workflow. Ms. McCall followed up to ask if there are any additional technologies Mr. Marquis thinks would improve his process. Mr. Marquis responded that he is always looking for new tools to improve the office's processes.

Ms. Kotler noted that Mr. Marquis' office receives appeals from her FOIA program. She then asked whether he uses the same tools to track appeals. Mr. Marquis responded that he does use the same technology to track appeals. He noted, however, that another staff was moved into his office and as a result he currently has two parallel tracking systems to manage the workflow. He added that he will have to see if the systems can be merged and that the tracking process can be improved.

Mr. Susman asked if Mr. Marquis is tracking the impact of proactive disclosures on the FOIA office's workload. Mr. Marquis responded that he is working with the agency's web team to

gather data about the number of times people look at a particular record that has been proactively released.

Ms. Pustay expressed her thanks to Mr. Marquis for his presentation and noted that he has been a featured speaker at the Department of Justice's best practices workshop on backlog reduction.

Ms. Semo asked if there were any questions from people participating on the phone and Mr. Moulton responded that he would like to ask Mr. Marquis if one of the metrics he tracks is the number of pages processed. Mr. Marquis said that he has not had success with tracking page counts because the staff become overly concerned with volume. Mr. Marquis added that he sets performance goals related to the number of cases closed for his staff but he also takes volume into consideration when conducting performance evaluations.

Mr. Moulton also asked Mr. Marquis if he had ever brought in temporary staff as part of his backlog reduction efforts. Mr. Marquis said that he had brought on retired FOIA specialists as contractors as part of his backlog reduction strategy. The benefit of hiring retired FOIA analysts, Mr. Marquis said, is that they could begin closing cases right away and the quality of the work was high with minimal oversight. Mr. Moulton followed up to ask Mr. Marquis if the contractors participate in the weekly staff meetings to review the program's statistics. Mr. Marquis responded that he cannot speak to how the contractor evaluates employees but that the individual managing the contractors has been invited to some of the staff meetings to discuss performance, production and disclosure.

Mr. Hershberg noted that excessive backlogs could be attributed to over-classification.

Ms. McCall asked Mr. Marquis what he believes would be the most valuable recommendation that the FOIA Advisory Committee could make to help him do his job. Mr. Marquis responded that at the top of his wish list at HHS is the adoption of an enterprise-wide tracking system. He explained that an enterprise-wide tracking system would improve coordination within the agency and improve management of the program. Ms. McCall followed up to ask Mr. Marquis if he knew of any agencies that had an enterprise-wide tracking system and he responded that he did not. Mr. Bekesha asked what items are second and third on Mr. Marquis' wish list. Mr. Marquis demurred, saying he likes to work from the top of his list down.

Ms. Semo and Ms. McCall thanked Mr. Marquis for his time and Ms. Semo called for a 15-minute break. After the break Ms. Semo announced that the next item on the agenda was an update from the Search Subcommittee.

Search Subcommittee Update

After Ms. Semo reconvened the Committee, Mr. Jones announced that the subcommittee had held its first meeting. He then stated that before updating the Committee on the subcommittee's work he wanted to applaud Mr. Marquis because HHS was the only agency that managed to reduce its backlog by 10 percent each year for the last eight years. Mr. Jones then said that one of

his takeaways from the subcommittee's first meeting is that inefficient search techniques contribute to persistent issues with FOIA backlogs.

Mr. Jones said that the subcommittee's first step will be to gather more information about how agencies conduct searches. He noted that requesters are often frustrated because they do not have much insight into agencies' processes and that even online tracking system that provide some insight, like *FOIAonline*, do not provide any detail beyond that the request is "out for search."

Mr. Jones also said that the subcommittee would like to discuss making FOIA performance a part of program officer's performance evaluation. He said that the goal is to make sure employees live up to the [former] Attorney General's guidance that "FOIA is everyone's responsibility."

Mr. Jones added that another goal of the subcommittee is to evaluate the use of e-discovery tools for FOIA requests. Mr. Jones explained that e-discovery tools are frequently used by agencies in litigation to search for records. He added that these tools are often not used to locate records that are responsive to a FOIA request, in part because of the cost associated with using the tool. Mr. Jones said that the next step on e-discovery is for the subcommittee to invite someone to speak about these tools at the next Committee meeting.

Mr. Jones said that another aspirational goal of the subcommittee is to expand the ability of FOIA offices to search electronic records. He provided the example of searches for emails, stating that some FOIA offices can ask the IT department to conduct a search while other agencies ask employees to search their own emails for responsive records.

Mr. Jones said that the goal for the next meeting is to be able to discuss expanding the use of e-discovery tools. He also said that prior to the next meeting his organization, the National Security Archive, would launch a survey to collect information from federal employees and FOIA requesters about how agencies conduct searches. The goal of the survey, he said, is to have a better understanding of the variety of search methods used by the federal government and to look for efficiencies and inefficiencies in their processes. The subcommittee, he added, would like to use this information to develop a set of best practices for FOIA searches. Mr. Jones then opened the floor up for discussion.

Mr. Valvo said that one of the issues with e-discovery tools is that in his experience agencies do not use them until his organization files a lawsuit. He added that this creates an incentive for his organization to file a lawsuit as quickly as possible.

Ms. Pustay said that the best path forward, in terms of efficiency of searches, is to put as much control in the FOIA office's purview as possible.

Mr. Bekesha asked if FOIA officers are authorized to access all of an agency's electronic files. Ms. Pustay responded that the amount of access the FOIA office is given varies at each agency depending on factors like privacy concerns, and law enforcement sensitivity. She added that it would be useful to be able to chart out how much access different agencies give to FOIA staff.

Mr. Susman noted that a best practice for an agency is to keep the requester informed during the search process.

Ms. Pustay said that another best practice is to work with the requester to set priorities about what files should be searched and determine key words that should be used during the search.

Mr. Pritzker asked Mr. Jones if he could clarify how the survey will be conducted. Mr. Jones explained that the National Security Archive will conduct the survey independent of the Committee and that the data will be posted on their website.

Ms. McCall noted that it is also useful for agencies to discuss the acquisition of things like cloud-based email systems with the FOIA office early in the acquisition process.

Ms. Lazier noted that program offices often have a better understanding of their records systems and the types of records they collect than the FOIA office. She noted that having the program people involved in the search can be very useful in understanding what specific records the requester wants and when working with a requester to narrow the scope of a search. Ms. Pustay agreed with Ms. Lazier.

Ms. Semo asked if there were any additional questions in the room or on the phone. Mr. Jones said that he is looking forward to working with the subcommittee on the issue. Mr. Susman then suggested that, given the scope and complexity of the issues the Committee is addressing, that they might want to consider developing and voting on smaller recommendations as they go along rather than waiting to submit all reports and recommendations at the end of the Committee's term. Ms. Semo thanked Mr. Susman for his comment and responded that OGIS stands prepared to provide the Committee with any necessary administrative support.

Ms. Semo then opened the floor for public comment.

Public Comments

Mr. Howard introduced himself as the Deputy Director of the Sunlight Foundation. He then asked about the status of the "release to one, release to all" policy, and about when the public can expect to have more information on the development of the consolidated online FOIA request portal that the FOIA Improvement Act of 2016 requires the Department of Justice and OMB to create.

Ms. Pustay responded that they had held two meetings of the Chief FOIA Officers Council on the topic of the "release to one, release to all" policy and collected input from both agencies and requesters during these sessions. She added that the draft policy was issued for public comment in the Federal Register and that the comment period ended on December 23, 2016. She noted that they had received 30 comments on the policy and that the comments were incredibly thoughtful and suggested very different directions for the policy, particularly with respect to the idea of a required delay in posting records after their release under FOIA. She said that they are continuing to consider the comments and that when they have a decision they will issue

guidance. She also said that they had recently received funding to build the consolidated online FOIA request portal and hope to launch the first phase of the project within the next couple of weeks. She said that they will be working with 18F to develop the portal and that 18F generally begins projects with what it calls a "discovery period," which involves three months of working with the stakeholders, which includes both agencies and requesters. She added information about the project will be added to the website soon and that they will be asking people to provide feedback to 18F.

Mr. Howard followed up to ask why the "release to one, release to all" policy was not issued by January 1, 2017, which was the deadline set by the President for the release of the policy. Ms. Pustay answered that she is not the best person to answer that question and added that the timing of the policy made it difficult to meet the deadline and that they are continuing to consider the comments they received on the draft. Mr. Howard asked when they could expect the policy to be posted on the internet and Ms. Pustay responded that they will publish the policy once they have evaluated the comments and made a final determination. Mr. Howard and Ms. Pustay then discussed the availability of information about the policy.

Mr. Howard then asked a question about how much money had been allotted to development of the portal and which office is heading up its development. Ms. Pustay demurred from answering further questions.

Closing Remarks

Ms. Semo then asked if there were any additional public comments. She thanked everyone for their work and invited the audience to visit the OGIS website and follow the office on social media for more information about this meeting. She also invited the audience to attend the next Committee meeting on Thursday, April 20, 2017 beginning at 10:00 am in the William G. McGowan Theater.

I certify that, to the best of my knowledge, the foregoing minutes are accurate and complete on February 27, 2017.

_____
Amy Bennett
Designated Federal Officer, 2016-2018 Term

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Alina M. Semo
Chair