

2020-2022 Freedom of Information Act Advisory Committee Technology Subcommittee

- D R A F T -

Recommendation No. 2022-TS2

We recommend that the Archivist of the United States ask the Technology Committee of the Chief FOIA Officers Council to establish a working group within two years to determine recommended best practices for the release of records in native format, including metadata. This working group should address how these protocols should work vis-à-vis current practices under 5 USC 552(a)(3)(B) and align with NARA Bulletin 2015-04¹ and OIP's guidance on metadata and FOIA.² As part of its research, we encourage the Technology Committee to consult with outside experts, including the requester community, as necessary.

As a starting point for the working group, our recommendation is that the following file elements should be released to all requesters, upon request, subject to other FOIA exemptions, and with the understanding that classified national security records may require special protocols:

1. Identifier [File Name]. The complete name of the computer file including its extension (if present).
2. Identifier [Record ID]. The unique identifier assigned by an agency or a records management system.
3. Title. The name given to the record.
4. Description. A narrative description of the content of the record, including abstracts for document-like objects or content descriptions for audio or video records.
5. Creator. The agent primarily responsible for the creation of the record.
6. Creation Date. The date that the file met the definition of a federal record.
7. Rights. Information about any rights or restrictions held in and over the record including access rights such as national security classification, or personally identifiable information, Privacy Act, or Freedom of Information Act, or usage rights relating to copyright or trademark.

Background and Justification

We predict that metadata will emerge as a challenging issue for FOIA agencies in the near term as the requester community increasingly seeks metadata and federal agencies transition to a fully electronic environment per NARA Bulletin 2015-04. Complicating this matter further, most

¹ NARA Bulletin 2015-04 provides guidance to federal agencies for the minimum set of metadata elements that must accompany transfers of permanent electronic records to the National Archives. See <https://www.archives.gov/records-mgmt/bulletins/2015/2015-04.html>.

² Using Metadata in FOIA Documents Posted Online to Lay the Foundation for Building a Government-Wide FOIA Library. See <https://www.justice.gov/oip/blog/using-metadata-foia-documents-posted-online-lay-foundation-building-government-wide-foia>.

common software programs used by FOIA offices do not allow for the processing of metadata. Other agencies typically release documents in “flattened” PDFs with nothing in native format.

Additionally, the Technology Subcommittee considered whether this recommendation should also include the option for the Archivist to establish an advisory committee. However, we determined that it would be more appropriate for the Technology Committee of the CFO Council to conduct this work in consultation with the requester community.

Recommendation No. 2022-TS3

We believe that the following two (2) recommendations from the 2016-2018 FOIA Advisory Committee should be implemented, with the following revisions, within a two-year period following the release of this Report:

1. Encourage the 508 Compliance and Collaborative Tools Working Group of the Technology Committee of the Chief FOIA Officers Council to continue to research and recommend options for agencies to resolve the inherent conflicts that exist between FOIA's proactive disclosure requirements and Section 508 of the Rehabilitation Act, until a suitable legislative solution is enacted. For example, this working group could provide guidance and recommendations, including business requirements, to the commercial FOIA processing vendors to ensure that 508 compliance technology is incorporated into software solutions.
2. We recommend that FOIA.gov, as well as commercial portals, allow for the full text searching of FOIA logs. Additionally, agencies should proactively publish FOIA logs in the agency's electronic reading room (often referred to as FOIA Libraries) on an ongoing basis, at least quarterly, unless the agency receives 50 or less requests per year, in which case annually or semi annually would be appropriate.

To be most useful, agency FOIA logs should contain, at a minimum, each of the following fields in either Excel or CSV format, in preference to PDF:

- a) Tracking number of the request.
- b) Date of the request.
- c) Name of the requester, provided it is not a first-party requester (i.e., someone asking for records on himself or herself) – to be most useful, the agency should publish the names of all third-party requesters; the agency should also alert requesters that they will publish the names of third-party requesters in their FOIA logs.
- d) Organizational affiliation of the requester, if identified in the request.
- e) Whether the request was processed under the Privacy Act as well.
- f) Subject matter of the request.
- g) Status of the request (pending, closed, etc.).
- h) Fee category assigned to requester, if applicable (commercial, educational, news media, other).
- i) Whether a fee waiver was requested.
- j) If a fee waiver was requested, whether it was granted.

Background and Justification

D R A F T

In line with the Charter for the FOIA Advisory Committee, we advocate continued pursuit of technological solutions within agencies, the requester community, and the tech community, to address the proactive disclosures of government records and data.³

For 508 compliance, the Technology Committee has determined that this recommendation may be more effectively handled by the 508 Compliance and Collaborative Tools Working Group of the Technology Committee of the Chief FOIA Officers Council. We recognize that OGIS has already made this recommendation to Congress, described this in two annual reports,⁴ and has discussed it in recent Congressional testimony.⁵ We believe that the 508 Working Group is better positioned to undertake additional research and data collection to enable the changes in legislation to enable the additional resources to implement the first part of this recommendation.

We believe that the second part of this recommendation will benefit the requester community by allowing individuals easier access to identify and obtain previously released records and thus resulting in more cost-effective and faster releases by agencies. Agencies already compile significant information on each request and by establishing standard expected categories, the FOIA logs become more legible and useful for the public.

Requiring the regular—possibly live—production of FOIA logs presents a low-cost mechanism that will both aid requesters and potentially reduce the burden on agencies. The public will have a clear view of what is being requested and what has been released. Production of the logs also may sync up with increased proactive disclosure. Released records could be conveniently appended to each log entry after they are produced. Further, FOIA logs have become a tool of those studying FOIA processes, and the standardization would benefit this community as well.

³ FOIA Advisory Committee charter, under “Description of Duties”: The FOIA Advisory Committee fosters dialogue between the Federal Government and the requester community, solicits public comments, and develops recommendations for improving FOIA administration and proactive disclosures. See, <https://www.archives.gov/ogis/foia-advisory-committee/2020-2022-term>.

⁴ See *The Freedom of Information Act Ombudsman- Past, Present & Future 2019 Report for Fiscal Year 2018* (available at <https://www.archives.gov/files/ogis/assets/ogis-2019-annual-report-for-fy-2018.pdf>) and *The Freedom of Information Act Ombudsman 2021 Report for Fiscal Year 2020* (available at <https://www.archives.gov/files/ogis/assets/ogis-2021-annual-report-for-fy-2020.pdf>).

⁵ See *Testimony of Alina M. Semo, Director of the Office of Government Information Services Before the Senate Committee on the Judiciary* (March 29, 2022) (available at <https://www.judiciary.senate.gov/imo/media/doc/Semo%20testimony.pdf>).