The FOIA Advisory Committee convened at 10 a.m. on September 5, 2019, in the McGowan Theater of the National Archives Building at 700 Pennsylvania Avenue, NW, Washington, DC 20408-0001.

In accordance with the provisions of the Federal Advisory Committee Act, Public Law 92-463, 5 U.S.C. App. §§ 1-16, 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:// archives.gov/ogis/foia-advisory-committee/2018-2020-term.

Committee members present in the McGowan Theater:

- Alina M. Semo, Director, Office of Government Information Services (OGIS), NARA (Committee Chairperson)
- Jason R. Baron, Drinker Biddle & Reath (Co-Chairperson of the Records Management Subcommittee)
- Kevin M. Goldberg, American Society of News Editors
- Chris Knox, Deloitte (Co-Chairperson of the Vision Subcommittee)
- Sarah Kotler, Food and Drug Administration
- Ryan Law, U.S. Department of the Treasury (Co-Chairperson of the Records Management Subcommittee)
- Suzanne J. Piotrowski, Rutgers University
- Melanie Ann Pustay, U.S. Department of Justice (DOJ)
- Lee Steven, Cause of Action Institute
- James R. Stocker, Trinity Washington University
- Thomas Susman, American Bar Association
- Bradley White, Department of Homeland Security, (Co-Chairperson of the Time/Volume Subcommittee)

Committee members on the phone:

- Emily Creighton, American Immigration Council (Co-Chairperson of the Time/Volume Subcommittee)
- James R. Jacobs, Stanford University Libraries
- Lizzette Katilius, Securities and Exchange Commission
- Ginger P. McCall, State of Oregon
- Michael Morisy, MuckRock
- Abioye "Abi" Mosheim, Consumer Product Safety Commission
- Patricia Weth, National Labor Relations Board

Committee members absent from the meeting:

- Joan Kaminer, U.S. Environmental Protection Agency (Co-Chairperson of the Vision Subcommittee)

Others present at or participating in the meeting:

- Debra S. Wall, Deputy Archivist of the United States, NARA
- Eric F. Stein, Director of the Office of Information Programs and Services, U.S. State Department
- Michael Sarich, FOIA Director, Veterans Health Administration, U.S. Department of Veterans Affairs
- Kirsten B. Mitchell, Designated Federal Officer, NARA
- Martha W. Murphy, Deputy Director, OGIS, NARA
- Sheela Portonovo, Attorney-Advisor, OGIS, NARA

Introductions and Announcements

Deputy Archivist of the United States Debra S. Wall opened the fifth meeting of the 2018-2020 FOIA Advisory Committee by welcoming the Committee and the co-chairs of the Chief FOIA Officers (CFO) Council's Technology Subcommittee. She highlighted the importance of the FOIA Advisory Committee, comprised of FOIA experts from Federal agencies and the FOIA requester community, and its efforts to improve FOIA administration. Ms. Wall said that the Committee's work supports two of NARA's four strategic goals: "Make Access Happen" and "Connect with Customers." She said that excellent records management practices help to ensure an efficient and effective FOIA process, noting that NARA and the Office of Management and Budget (OMB) jointly issued a memorandum (OMB/NARA M-19-21) in June 2019 titled "Transition to Electronic Records," which offers guidance on managing Federal records. She said that she and the Archivist of the United States thank the Committee members for their work and look forward to hearing the Committee's ongoing discussions and deliberations.

Alina M. Semo, FOIA Advisory Committee Chairperson, welcomed meeting attendees and participants and recognized the hard work undertaken by the Committee. Ms. Semo then checked in with the Committee members participating in the meeting by phone who then introduced themselves. Ms. Semo outlined the meeting's agenda and reviewed housekeeping items. Ms. Semo acknowledged the contributions of NARA employees Carrie Tallichet Smith and Liz Pickford and OGIS student-intern Laurielle Lambert for administrative and research support they provided to the Committee.

The Committee voted to adopt the June 6, 2019, Committee meeting minutes.

Working Group to Finalize all Draft Recommendations

Ms. Semo asked for Committee members to volunteer for a working group responsible for compiling the draft of the Committee's recommendations with the goal of discussing them at the March 5, 2020 meeting. Mses. Mosheim and McCall had already volunteered to join the working

group.

Upcoming Retirement of Committee Member Melanie Ann Pustay from Federal Service

Ms. Semo recognized the upcoming retirement of Melanie Ann Pustay after 36 years of service with the U.S. Department of Justice (DOJ) including 12 years as Director of the DOJ Office of Information Policy (OIP). Ms. Semo thanked Ms. Pustay for her service to the Committee and her contributions to FOIA.

Past FOIA Advisory Committee Recommendations Update

OGIS Deputy Director Martha Wagner Murphy presented on the progress made on previous Committee recommendations and OGIS efforts to promote and implement the best practices outlined in the [2016-2018 Committee term's Final Report and Recommendations](#).

Ms. Murphy said that OGIS held its annual open meeting in May 2018 during which it hosted a panel of FOIA Advisory Committee members who presented on the work and recommendations of the 2016-2018 term. OGIS staff presented on the 2016-2018 term's work at American Society of Access Professionals (ASAP) events in the spring and summer of 2018 and at the CFO Council meeting OGIS hosted on October 8, 2018.

Ms. Murphy said that OGIS's [Fiscal Year 2018 Annual Report](#) to Congress and the President 2018 (published in March 2019) referred to Best Practices. On July 21, 2019, OGIS published an issue assessment titled "[Leveraging Technology to Improve Freedom of Information Act (FOIA) Searches](#)" that focused on the 2016-2018 Committee's three recommendations for improving FOIA searches. Ms. Murphy said that the publication of this assessment completed the 2016-2018 Committee's second recommendation for improving FOIA searches.

Regarding the 2016-2018 Committee's recommendation that the Archivist "suggest a modification to the Federal Acquisition Regulation (FAR) to ensure that all agencies consider FOIA obligations when acquiring electronic records management software," Ms. Murphy said that OGIS drafted a business case, submitted it to NARA's FAR Council representative and would be meeting with the representative to finalize the draft for submission to the FAR Council.

Regarding the 2016-2018 Committee's recommendation that the CFO Council establish a technology subcommittee, Ms. Murphy said that the CFO Council created the Technology Subcommittee about year ago. Ms. Murphy introduced the CFO Council Technology Subcommittee's co-chairs, Eric F. Stein and Michael Sarich, to present on the Subcommittee's work. Before turning the floor over to the co-chairs, Ms. Murphy asked whether anyone had any questions regarding the status of the recommendations. There were no questions.

CFO Council Technology Subcommittee Presentation

Mr. Stein, Director of the Office of Information Programs and Services at the U.S. State Department, said that the Subcommittee had spent the past year reviewing information technology (IT) practices at Federal agencies and enlisting feedback from the American Society

of Access Professionals (ASAP), the Chief Information Officers (CIO) Council, and the CFO Council. The outcome of the Subcommittee's efforts will be recommendations based on its findings.

Mr. Stein noted that the Subcommittee consists of representatives from a diverse group of agencies with various needs, challenges, and technological capabilities. Mr. Sarich, FOIA Director for the Veterans Health Administration at the U.S. Department of Veterans Affairs, noted that all FOIA programs have the same mandate and deadlines for responding to FOIA requests; however, the resources available to the FOIA programs vary by agency. He said that FOIA programs face challenges in terms of the increasing complexity of requests and litigation. Technology and improved techniques and methodologies can improve FOIA administration.

Mr. Stein said that beginning in December 2018, the Subcommittee met once or twice a month to study the use and deployment of technology in FOIA programs across agencies, and identify best practices and recommendations that agencies can implement. He said that the Subcommittee reviewed annual CFO reports to determine where different agencies were located within their organizations and what they reported.

The co-chairs noted that one of the biggest take-aways from the Subcommittee's work has been that there are no one-size-fits all solutions and FOIA programs exist in different locations within agencies with differing levels of support. Mr. Stein said that the Subcommittee plans to finalize its draft report, which will be a series of recommendations and practical solutions in September 2019.

Mr. Stein said that the Subcommittee looked into the issue of how and whether agencies are leveraging Artificial Intelligence (AI). He said he has not seen FOIA programs use AI yet; however, he has seen firsthand what machine learning is capable of doing and finds it promising from a records perspective, which will help FOIA programs and other programs for public access to records.

Mr. Stein and Mr. Sarich responded to comments and questions from Ms. Pustay, Jason R. Baron and Patricia Weth.

Mr. Stein said that members of the FOIA Advisory Committee could email him and Mr. Sarich to share their feedback. He said that the Subcommittee hoped to finalize its draft report and submit it to OIP and OGIS.

The Committee took a break.

Subcommittee Reports

The Committee devoted the next portion of the meeting to status reports from the three subcommittees.

Vision Subcommittee

Vision Subcommittee Co-Chair Chris Knox presented a status update on the Subcommittee's activities. Mr. Knox explained that the Subcommittee divided its work concerning a shared vision for the future of FOIA into the following four areas, each of which are led by a member of the Subcommittee:

- Raising the priority of FOIA within the executive branch and increasing accountability for FOIA and transparency, led by Joan Kaminer
- Reconsidering the model of OGIS within the FOIA community, led by Ms. Weth
- Managing expectations between requesters and the agencies, led by Kevin M. Goldberg
- Stressing the need for increased and continued financial support for agency FOIA programs, led by Michael Morisy

Since the Committee's previous meeting, Mr. Knox reported that the Subcommittee launched a survey to FOIA agencies and requesters in July 2019. Mr. Knox said that Ms. Kaminer plans to interview Committee members on her area of focus in the upcoming weeks. Mr. Knox said that Ms. Weth and members of the Subcommittee have looked at OGIS's role and have moved onto examining other ombudsmen and bodies doing similar work at the state, Federal, and international levels. They plan to bring their findings back to the Subcommittee for discussion and next steps.

Mr. Goldberg said that the Vision Subcommittee collaborated with the Time/Volume Subcommittee on the two surveys of FOIA professionals and requesters to administer at the ASAP National Training Conference and the ASAP Privacy Day Program. The surveys included 12 questions for agency FOIA officers and 10 questions for FOIA requesters. Roughly 100 agency FOIA officers and 90 FOIA requesters responded to the surveys. Next, Mr. Goldberg said the Subcommittees will review and analyze the responses to the surveys. Ms. Semo asked whether there were questions for the Vision Subcommittee. There were no questions.

Time/Volume Subcommittee

Time/Volume Subcommittee Co-Chair Bradley White presented a brief update on the Subcommittee's activities. He said that the Time/Volume Subcommittee's focus has been the surveys administered by the Vision Subcommittee and Time/Volume Subcommittee. He had nothing further to add to the Vision Subcommittee report on the surveys.

Ms. Mosheim said that the group within the Time/Volume Subcommittee that is examining international FOI models relating to high-volume case management recently met. Members of the group are having difficulty locating information related to budget and costs and plan to contact the foreign FOI offices directly to request this information. The group has observed that most countries receive fewer FOIA requests each year than the U.S. and the group is trying to determine why this is the case. The group's findings may form the basis of its recommendations. The group plans to conclude its research by October 2019.

Records Management Subcommittee

Records Management Subcommittee Co-Chairs Mr. Baron and Ryan Law presented a status update on the Subcommittee's activities.

Mr. Law said that the Subcommittee has met three times since June 2019 to create and draft seven proposed recommendations for the full Committee's consideration.

Mr. Law presented Proposed Recommendation 1 which states: "We recommend that the Archivist of the United States request that the Department of Justice, Office of Information Policy (DOJ/OIP), issue guidance to require agencies to include records management-related materials as part of agency websites and FOIA handbooks maintained pursuant to FOIA." Mr. Law provided the rationale behind the proposed recommendations and Committee members offered comments.

Mr. Baron presented Proposed Recommendation 2 which states: "We recommend that the Archivist of the United States direct NARA and request that DOJ/OIP offer targeted training in selected topics in Federal records management to FOIA officers and FOIA Public Liaisons in Federal agencies, and otherwise include a FOIA module in selected records management training courses open to all Federal employees." Mr. Baron shared the reasoning behind the proposed recommendation. Ms. Weth said that she supported the proposed recommendation and there was no further discussion of it.

Mr. Baron explained Proposed Recommendation 3 and the thinking behind it. Proposed Recommendation 3 states: "We recommend that the Archivist of the United States request that the Department of Justice, Office of Information Policy (DOJ/OIP), provide further best practice guidance on what constitutes for FOIA purposes an "adequate search" of agency records managed in electronic form, including but not limited to email in Capstone repositories."

Mr. Baron noted that part of this proposed recommendation has yet to be drafted. He said that this proposed recommendation parallels the CFO Council Technology Subcommittee's efforts and expects that the recommendation ultimately proposed would include best practices with regard to conducting searches and e-discovery protocols. Ms. Weth said she thought the type of guidance proposed here might be difficult for DOJ/OIP to issue because every agency is unique and has various tools to conduct their searches. There were no further comments on Proposed Recommendation 3.

Mr. Baron introduced Proposed Recommendation 4 which states: "We recommend that as part of the Federal Electronic Records Modernization Initiative (FERMI), the Archivist of the United States direct NARA to incorporate and further develop the idea of public access to Federal records, including through FOIA."

He offered the rationale behind this proposed recommendation and said that the Records Management Subcommittee has discussed the matter with NARA. Ms. Semo confirmed that NARA/OGIS has been working on the FERMI initiative. There were no further questions or comments on this matter.

Mr. Law explained Proposed Recommendation 5 and the reasoning behind it. Proposed Recommendation 5 states: "We recommend that the Archivist of the United States make a formal request to the Chair of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) that CIGIE consider designating as a cross-cutting project or priority area the issue of how agencies are doing in providing FOIA access to agency records in electronic or digital form."

Mr. Law observed that the Committee had previously heard from members of CIGIE which is an independent entity established within the Executive Branch to address integrity, economy and effectiveness issues that transcend individual government agencies. Mr. Baron noted that it would be a good idea for the Committee to recommend that CIGIE consider the cross-cutting issues across all agencies involving FOIA. The Committee did not have any questions or comments regarding Proposed Recommendation 5.

Mr. Baron summarized Proposed Recommendation 6 which states: "We recommend that the Archivist of the United States direct NARA and request that DOJ/OIP each establish a liaison with the newly created Chief Data Officer (CDO) Council, for the purpose of ensuring that CDO officials understand the importance of Federal recordkeeping and FOIA requirements and how such laws apply to the maintenance of data within agencies." Mr. Baron and Mr. Law provided background information on The Foundations for Evidence-Based Policymaking Act (Evidence Act; Pub.L. 115–435), the joint OMB-NARA memorandum (OMB/NARA M-19-21), the role of Chief Data Officers (CDO) and the CDO Council and their connection to Federal records management and FOIA. Ms. Pustay noted that DOJ's CDO Council includes OIP and that the DOJ CIO also serves as the agency's CDO.

Mr. Baron presented Proposed Recommendation 7 which states: "We recommend that the Archivist of the United States work with other governmental components and industry in promoting research into using artificial intelligence (AI), including machine learning technologies, to (i) improve the ability to search through government electronic record repositories for responsive records, and (ii) segregate sensitive material in government records, including but not limited to material otherwise within the scope of the nine FOIA exemptions." Mr. Baron said that this recommendation comes from the Records Management Subcommittee's reading of Annual CFO reports and the Committee's previous work. The Records Management Subcommittee would recommend that the government support research focused on the application of AI, machine learning tools, and e-discovery to disclose releasable records and protect sensitive information under FOIA. Ms. Weth supported this proposed recommendation.

Ms. Weth asked Mr. Baron who would be doing the research proposed by this recommendation. Mr. Baron said that he did not think it was for the FOIA Advisory Committee to flesh this out unless the Committee determined that it needed to drill down on this issue to provide more direction to the Archivist in this recommendation. Regarding Ms. Weth's question as to whether the research would involve a private/public partnership, Mr. Baron said that would be a prime option for this.

Mr. Knox raised the possibility of having a government thought leader present on the topic of AI and machine learning at a future Committee meeting. Ms. Semo said she was open to the idea.

Mr. Goldberg noted that there may not be time to fit in such a speaker at a future meeting.

James R. Jacobs noted that the Stanford University Libraries created an open source software called "ePADD" that incorporates techniques from computer science and computational linguistics, including machine learning, natural language processing, and named entity recognition to help users access and search archival and special collections. Mr. Jacobs said that it might be worthwhile for the Committee to look at ePADD.

Mr. Knox said that he supports Proposed Recommendation 7.

Mr. Jacobs said that he and Mr. Baron have been discussing an eighth proposed recommendation for the Archivist to direct NARA/OGIS and to request that DOJ/OIP encourage agencies to work toward a goal of collecting, describing and giving access to FOIA-related records in one or more central repositories in standardized ways. Mr. Jacobs said this recommendation may be split into two parts - one about the use of central FOIA repositories as a good goal, and the second on the use of Extensible Markup Language (XML) and machine readable formats and metadata. Mr. Jacobs said that they are still working on the wording of this recommendation and hoped to have it together within the next month.

Ms. Pustay directed the Committee's attention to the work of 18F which was done prior to the launch of the national FOIA portal.[1] Ms. Pustay said that 18F and DOJ concluded that that metadata tagging rather than a central repository was the best way to move forward though many people like the idea of a central repository. Mr. Jacobs said that he would look at 18F's work and incorporate it into the proposed recommendation. He said that they have also been looking at FOIAonline. Ms. Semo asked for further comments or questions and there were none.

Public Comments

At 12:41 PM, Ms. Semo opened the floor for public comment. Alex Howard, affiliated with epluribusunum.org, expressed thanks for the open forum provided by the Committee, the livestreaming of the meeting, and the responsiveness of NARA staff in response to a query he had made during the course of the Committee meeting. He noted that his positive experience was not always the case across the agencies. Mr. Howard thanked Ms. Pustay for her years of service and hoped that DOJ would find a candidate to improve upon her record at OIP. Mr. Howard asked Ms. Pustay as to whether there was an update on the OIP policy for "release to one release to all" that DOJ took public comment from over two years ago.[2]

Ms. Pustay thanked Mr. Howard for his initial comments and noted that the "release to one release to all" is a DOJ initiative. Ms. Pustay observed that she had previously explained in response answers to Mr. Howard's past questions on the topic, the challenge that agencies face in posting everything they release under FOIA and the concern agencies have that posting more means that they will have fewer resources available for processing. She noted that there are

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[1] 18F is an office within the General Services Administration (GSA) that collaborates with other agencies to fix technical problems, build products, and improve how government serves the public through technology.

[2] DOJ published for public comment in the Federal Register a draft policy implementing a "Release to One, Release to All" presumption for FOIA processed records on December 9, 2019. See 81 FR 89023 (12/09/2016).

trade-offs. Ms. Pustay said that OIP encourages agencies to proactively release as much as they can. She noted the FOIA's requirement for agencies to post records that have been requested three or more times.

Mr. Howard noted that the Federal government is spending millions of dollars on FOIA annually and that it seems to make sense from a cost perspective to encourage agencies to post records online and direct people to the records.

Mr. Howard said that the government established a cross-agency priority (CAP) goal on FOIA in 2016 which was posted on performance.gov. He noted that the goal was removed from performance.gov and asked whether anyone on the Committee could speak to why the CAP goal does not exist anymore or whether it may be useful for achieving the goals the Committee has described. There were no responses to Mr. Howard's question. Mr. Howard said that he was sorry to not hear a response to his question and said that he hoped the members of the Committee would consider recommending that such a goal be restored.

Mr. Howard asked whether Committee will make any recommendations to Congress regarding the FOIA reform bill being drafted in the wake of the recent Supreme Court decision on FOIA. Ms. Semo said that the legislation has not been on the agenda on any of the Subcommittees' meetings. Ms. Semo said that Committee members may consider the matter for discussion within their subcommittees. Mr. Howard encouraged Committee members to offer their expertise on the draft bill.

Ms. Pustay said that she did not want to leave Mr. Howard hanging with regard to his previous question on the FOIA CAP goal. She said that the FOIA Advisory Committee meeting and proposed recommendations are an example of a cross-agency and private and public sector collaboration. She said that there is no lack of interest, motivation, or initiative in FOIA across the government.

Mr. Howard cited his experience reporting on and following the U.S. government's FOIA compliance for the past decade. He said that when a President's management agenda includes particular CAP goals it demonstrates that it is a priority. He said that removing a FOIA CAP goal sends a signal across government. He said that it is fair to highlight where and when priorities have changed without any accountability or transparency and the impact it may have on the shared goals of the Committee.

Mr. Howard said that the Evidence-Based Policy Making Act's requirement for agencies to publish a data inventory should help FOIA offers and requesters know what records agencies maintain and whether they have been disclosed online. Mr. Howard inquired as to whether anyone was aware of guidance harmonizing the Open Government DATA Act and the FOIA's requirements for proactive disclosures. If no one was aware of any guidance, he recommended that such guidance be created. Mr. Baron said that he thinks that the Committee should be considering Mr. Howard's point as part of its recommendations.

In addition to their recommendations, Mr. Howard encouraged the Committee to look at the people who operate electronic FOIA reading rooms and how people are using such rooms.

Mr. Howard said that the Environmental Protection Agency's (EPA's) recent FOIA regulations are not harmonized with the 2016 FOIA Improvement Act and were cited by the agency as reasons not to accept FOIA requests via email. Mr. Howard asked whether Committee members have views on whether agencies should accept FOIA requests by email or impose artificial limits on FOIA requests that are not laid out in the statute.

Ms. Pustay said that there are sound reasons for agencies that have portals to direct requesters to use the portals rather than email for the sake of efficiency. Mr. Howard asked whether Ms. Pustay was saying that DOJ is saying that agencies need to either accept requests via a portal or via email. Ms. Pustay said it was difficult to imagine situations where a requester could not do one or the other. She said that requesters should never be forced to use anything other than electronic means for submitting requests. Mr. Howard said that Ms. Pustay would be surprised by the experiences of members of the requester community and encourages the Committee to consider and incorporate the experiences of requesters into its recommendations.

Ms. Semo asked OGIS Attorney Advisor Sheela Portonovo whether the Committee had received any questions, comments or statements online. Ms. Portonovo said that the last time she was able to check, there were no comments or questions for the Committee.

Closing Remarks and Adjournment

Ms. Semo thanked the Committee members for their work thus far and said that the Committee would hold its next meeting on Friday, December 6, 2019. Ms. Semo adjourned the meeting.

I certify that, to the best of my knowledge, the foregoing minutes are accurate and complete on December 6, 2019.

S/*Kirsten B. Mitchell*/_____
Kirsten B. Mitchell
Designated Federal Officer, 2018-2020 Term

S/*Alina M. Semo*/_____
Alina M. Semo
Chairperson, 2018-2020 Term

The Committee will formally consider these minutes at its December 6, 2019 meeting, and incorporate any corrections or notations in the minutes of that meeting.