



**National Archives and Records Administration
(NARA) Freedom of Information Act (FOIA) Advisory
Committee
Meeting Minutes – December 6, 2019**



The FOIA Advisory Committee convened at 10 a.m. on December 6, 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 1:10 p.m.

Meeting materials are available on the Committee's website at [https:// archives.gov/ogis/foia-advisory-committee/2018-2020-term](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)
- Emily Creighton, American Immigration Council (Co-Chairperson of the Time/Volume Subcommittee)
- James R. Jacobs, Stanford University Libraries
- Joan Kaminer, U.S. Environmental Protection Agency (Co-Chairperson of the Vision Subcommittee)
- Sarah Kotler, U.S. Department of Health and Human Services, Food and Drug Administration
- Ryan Law, U.S. Department of the Treasury (Co-Chairperson of the Records Management Subcommittee)
- Michael Morisy, MuckRock
- Abioye "Abi" Mosheim, U.S. Consumer Product Safety Commission
- Sean Moulton, Project on Government Oversight (POGO)
- Lee Steven, Cause of Action Institute
- James R. Stocker, Trinity Washington University
- Thomas Susman, American Bar Association
- Bobak Talebian, U.S. Department of Justice, Office of Information Policy
- Bradley White, U.S. Department of Homeland Security, (Co-Chairperson of the Time/Volume Subcommittee)

Committee members on the phone:

- Suzanne J. Piotrowski, Rutgers University School of Public Affairs and Administration
- Patricia Weth, U.S. National Labor Relations Board

Committee members absent from the meeting:

- Kevin M. Goldberg, Digital Media Association
- Lizzette Katilius, U.S. Securities and Exchange Commission
- Chris Knox, Deloitte (Co-Chairperson of the Vision Subcommittee)

Others present at or participating in the meeting:

- Debra S. Wall, Deputy Archivist of the United States, NARA
- Kirsten B. Mitchell, Designated Federal Officer, NARA
- Martha W. Murphy, Deputy Director, OGIS, NARA
- Jessie Kratz, National Archives Historian, OGIS Detailee, NARA

Introductions and Announcements

Deputy Archivist of the United States Debra S. Wall opened the sixth meeting of the 2018-2020 FOIA Advisory Committee by welcoming the Committee. She said that David Ferriero, who usually welcomes the Committee and public, sends his regards. She said earlier this fall the Committee began discussions of proposed recommendations, and she understands today's meeting will focus on continued discussion and deliberation about the possible recommendations. She then thanked the Committee for its work in making the FOIA process better for everyone.

Alina M. Semo, FOIA Advisory Committee Chairperson, welcomed meeting attendees whether in person, by telephone, or via live stream. Before going through housekeeping rules, Ms. Semo asked Committee members to introduce themselves. After Committee member introductions, Ms. Semo thanked NARA's audio-visual team for making the meetings run so smoothly, and introduced two new members to the Committee: Bobby Talebian and Sean Moulton.

Ms. Semo then reminded everyone that the FOIA Advisory Committee reports to the Archivist of the United States and provides a forum for public discussion on FOIA issues, and encouraged public comments anytime that can be e-mailed to foia-advisory-committee@nara.gov. Ms. Semo said that at the end of the meeting the public can comment or ask questions either in person or via the YouTube link, which is being monitored. Ms. Semo also reminded everyone the video, transcript, and meeting material are all available on the FOIA Advisory Committee website. Ms. Semo then welcomed the Historian of the National Archives, Jessie Kratz, who is on a part-time detail with OGIS to support the Committee. Finally, Ms. Semo asked if there were any objections to the September 5, 2019, meeting minutes, and having heard none said she would certify the minutes to be true, complete, and accurate.

Ms. Semo then invited OGIS Deputy Director, Martha Murphy, to provide an update on the FOIA Advisory Committee recommendations and best practices from the last two committee terms.

Past FOIA Advisory Committee Recommendations Update

Ms. Murphy said she would comment only on recommendations where there has been an update and all of the recommendations are included in the [Past FOIA Advisory Committee Recommendations Update slides](#). For recommendation #1, she reported that the CFO Technology Subcommittee has been meeting throughout 2018 and 2019, and is finalizing its report. For recommendation #2, Ms. Murphy said OGIS published an issue assessment, "Leveraging Technology to Improve FOIA Searches," so that closes out that recommendation. For recommendation #3, Ms. Murphy reported that OGIS' draft business case for a presentation to the Federal Acquisition Regulation (FAR) is complete, and OGIS is waiting for

NARA's representative to the FAR to complete the final revisions and submit to the FAR Council. For recommendations #5 and #7, Ms. Murphy reported that OGIS' compliance team is staffed at two with the addition of Christa Lemelin, and their goal is to complete both assessments in Fiscal Year 2020. With no change in any other recommendations, Ms. Murphy turned the meeting back over to Ms. Semo.

Introduction to the Discussion of Subcommittee Work

Ms. Semo reminded the Committee of their ambitious schedule for subcommittee work, and that subcommittees should finalize all draft recommendations by early calendar year 2020 with the goal of presenting final recommendations by the March 5, 2020, meeting. She also announced they have scheduled an additional meeting on Friday, May 1, 2020, to allow time for additional discussions and deliberations.

Ms. Semo explained that today the Committee will be hearing from all three subcommittees but nothing would be brought up for a vote this meeting. Ms. Semo asked the chairs of Time/Volume Subcommittee, Emily Creighton and Bradley White, to make their presentation first.

Discussion of Time/Volume Subcommittee Work

Ms. Creighton outlined the subcommittee's work process including looking at what past subcommittees have done. She also reported on a survey they developed to help them better understand the needs of both the [requester community](#) and the [agencies](#). She then turned it over to Bradley White to go through the [Time/Volume Subcommittee Proposed Recommendations](#). Mr. White introduced the first recommendation and asked for comments.

The recommendation states: Agencies conduct a comprehensive review of their technological and staffing capabilities and requirements to ensure that they have the resources necessary to respond to changing FOIA needs. This should include planning to address future increases in the number of FOIA requests received, as well as high-volume e-discovery style document reviews.

Mr. Moulton raised a point about getting agencies to have an honest assessment about staffing and the backlog. Mr. White acknowledged that he shared that concern but for this recommendation they are looking five or so years in the future. Ms. Creighton added that it sounds like what they mean is to create a strategic plan for making the FOIA process better. Mr. Morisy added he would like to see agencies highlight ways they are investing in programs to avoid the need for FOIA in the first place. The Committee then had a discussion about making the recommendation as a best practice, and also use it as an opportunity to get more Chief FOIA, Chief Records, Chief Privacy, and Chief Data Officers involved.

Ms. Creighton then brought up the point that the requester community has a lot of questions about personnel and the backlog. Mr. Law talked about his experience in Treasury and, as with other agencies, they are reactive when it comes to the backlog and use temporary staff rather than full-time employees (FTEs) which go away once the backlog is reduced. Ms. Kaminer added that the Vision Subcommittee suggested federal agencies use metrics to plan for surges in requests and decreasing the backlog. Mr. Moulton ended the discussion by adding that with best practices and strategic plans going forward, agencies should encourage involving all FOIA stakeholders to help make a more honest assessment and forward-looking plan.

Mr. White then read the second recommendation and asked for comments. It states: *That agencies periodically review their FOIA SOP, or create one as necessary, to ensure that the process for receiving and logging-in FOIA requests, and process for searching for, processing, and reviewing records are efficient. The SOP should reflect the current agency practices and technology used, should it be updated*

at least every two years, and should be publicly available on the agency's website.

Mr. Talebian expressed his support of the recommendation and pointed to the DOJ self-assessment toolkit as a resource for agencies. Mr. Susman questioned the two-year schedule for updates as a possible imposition on agencies, by which Ms. Mosheim responded some don't get updated for 20 or 30 years so a time frame is needed or the updates won't get done. Mr. White recognized two years might be ambitious but outdated systems and SOPs are problematic to which Mr. Susman agreed a timeframe was in fact needed. Mr. Susman then added they should think about putting a timeframe on recommendation 1. Mr. White replied they were thinking five years for strategic planning.

The Committee then had a general discussion about the importance of having updated SOPs and the possibility that OGIS make such a recommendation. Mr. Talebian noted that is something that is normally included in the Chief FOIA Officer reports. Mr. Law pointed out there was some alignment on this and another recommendation that the Archivist requests OGIS and DOJ to issue guidance to agencies to better educate the requester community on agency records and processes for FOIA, especially by posting information online. Mr. Morisy asked if any agencies already do a good job of posting materials online and Ms. Weth pointed to the National Labor Relations Board as hitting the mark.

Ms. Kaminer then read the third recommendation. It reads: *That agencies provide regular training for all staff, including FOIA professionals, subject matter experts, technology professionals, and management/supervisors, responsible for implementing FOIA as a part of agency's FOIA procedures in order to enable staff to properly and efficiently process FOIA requests.*

Ms. Kaminer then provided a background on agencies' FOIA training. Mr. Baron stated that the recommendation should say agencies provide regular training for all staff, not just to FOIA professionals, so that it isn't interpreted as no training is the baseline. Mr. Law added the idea of role-based training. The Committee then had a discussion of training and how agencies should provide the proper FOIA training to all personnel.

Mr. Stocker gave an overview of the work of the international sub-subcommittee of the Time/Volume Subcommittee whose members have looked at other countries with FOIA laws. He then read the recommendation, which states: *That agencies identify common types of documents requested as part of FOIA and establish alternative processes for providing these documents to requesters on terms equal to or better than FOIA.*

Ms. Kotler noted that it's important to look at where the hold-up is in the process because oftentimes those who handle other, non-FOIA requests are often the same staff who are responsible for FOIA requests. She also asked if some particular types of records are causing the backlog and whether simply taking them out of FOIA would fix anything. A Committee discussion followed about the backlog with USCIS (Alien) A-files and immigration records which Mr. White acknowledged are quite time-consuming to process and simply taking them out of FOIA wouldn't necessarily remedy the situation.

Ms. Mosheim recommended that agencies start thinking about how they will make records available to the public at the point of the records' creation, with which Mr. Moulton agreed and added first-person requests should be looked at for that opportunity. Ms. Creighton noted a large number of requests—a quarter of them—are requests for immigration records from the Department of Homeland Security, and a creative solution to the problem will have a big impact on the volume of FOIA requests to that agency. Mr. Moulton added there needs to be an even more pointed recommendation aimed directly at the immigration records since they are a quarter of the country's requests.

Mr. Stocker read and opened for comments recommendation number five, which states: *That agencies utilize existing statutory provisions that allow for the dissemination of information outside of the FOIA and ensure that the programs that provide such information dissemination are robust. Consistent with the Office of Management and Budget/National Archives and Records Administration Memorandum M-19-21 which requires all federal agencies to digitize their records by December 31, 2022, agencies should provide this information electronically, developing online databases where members of the public may access commonly requested (via the FOIA or alternative statutory provisions) types of documents that go to the heart of the agency's mission, and providing secure online databases where that information contains personally identifiable information or other sensitive information.*

Mr. Morisy asked if a provision for incentives or additional resources could be added to prevent another unfunded mandate. Ms. Creighton suggested they add language to have the Archivist of the United States recommend how an agency resources these recommendations.

Ms. Creighton read recommendation six, which states: *Recommend enhancing agency transparency by providing, on the agency website, contact information for a FOIA Point of Contact, who may or may not be the FOIA Public Liaison; Commonly Asked Questions that include an explanation of the types of records maintained by the agency; and the estimated processing timeframes for simple and complex requests.*

Ms. Creighton added that the goal of this recommendation is to get better information to the requesters in the first place to avoid lawsuits and administration appeals. Mr. Talebian pointed out that agencies should already be putting information online, including Q&As and processing times. He also noted that in addition to putting information online agencies should have contact information available and have conversations with requesters. The Committee then discussed the importance of agencies communicating with the requesters, and providing accurate and current contact information.

The Committee took a 15-minute break.

Discussion of Vision Subcommittee Work

Ms. Kaminer gave a brief update on the Vision Subcommittee's work and plans to have a draft of the recommendations by mid-to-late January. She pointed to a handout with a very rough draft of the [Vision Subcommittee Proposed Recommendations to the 2018-2020 FOIA Advisory Committee](#), and read through the first three recommendations which state:

1. Recommend that agencies conduct a comprehensive review of their technological and staffing capabilities and requirements to ensure that they have the resources necessary to respond to changing FOIA needs. This should include planning to address future increases in the number of FOIA requests received, as well as high volume e-discovery style document reviews.
2. More proactive data management—focus on impacting upstream.
3. 508 Compliance: a. Bringing the Industry perspective to 508 compliance; and b. Producing a flat PDF is necessary for production w/ redactions—how can we “bake-in” remediation.

Ms. Semo asked for comment on any of the first three recommendations. Mr. Law suggested the Federal government come up with a standard vehicle for 508 compliance. Mr. Moulton noted some additional problems with 508 compliance at which point Ms. Semo pointed to OGIS' legislative recommendations in the last annual report where they supplied ideas to Congress about 508 compliance issues.

Ms. Kaminer continued to the fourth recommendation on streamlining a process for certain types of records and added it is an opportunity to work with the Time/Volume Subcommittee. She read the fifth point on redefining search reasonableness. Ms. Semo mentioned that it pairs well with the work of the Time/Volume Subcommittee and the two subcommittees should work together on it. Ms. Kaminer continued to recommendation number six on a new FOIA legislation on access to records created by private prisons that contract with Bureau of Prisons, at which time the Committee had a brief discussion on existing efforts to make government work done by private entities more open.

Ms. Kaminer moved to recommendation number seven on release to one, release to all. Mr. Talebian commented that that recommendation goes with the discussion on 508 compliance, and Mr. White added a source of funds needs to be included.

Ms. Kaminer read recommendation eight about agencies being required to pay for litigation losses and FOIA litigation, and explained making a program pay for fees potentially results in less staff and resources to process other FOIA requests. Mr. Stevens asked for clarification and if the recommendation was intended to limit fees because they are a problem for the agency. Ms. Kaminer responded in the affirmative. Ms. Semo explained the negative impact fees can have on a particular program. Both Mr. Susman and Ms. Kaminer expressed the need for more data on this issue.

Ms. Kaminer said she was not going to discuss recommendation nine because it isn't fleshed out, and quickly addressed recommendation number 10, establishing a FOIA briefing for senior leaders during transition to a new administration, and recommendation number 11, recommending a revision to the statutory timeframe permitted for responding to complex FOIA requests.

Discussion of Records Management Subcommittee Work

Mr. Law, on behalf of the Records Subcommittee, stated they had several meetings since the September full Committee meeting when they introduced seven recommendations, but today they were introducing two new recommendations. Mr. Jacobs read the eighth recommendation, which states: *We recommend the Archivist of the United States request NARA/OGIS and DOJ/OIP work together to encourage agencies to work toward a goal of collecting, describing, and giving access to FOIA-released records in one or more central repositories in standard identified ways, in addition to providing access on agency websites.*

Ms. Mosheim asked if they were thinking on FOIA.gov which Mr. Jacobs replied FOIAonline.gov, FOIA.gov or maybe agencies have their own places—they don't want to tell agencies where to post them, just recommend they centralize those documents. Mr. Law gave the example of the State Department as having a centralized portal where all of their FOIA records are posted. Mr. Jacobs also gave kudos to DocumentCloud and MuckRock for having centralized databases.

Mr. Jacobs then read the ninth recommendation, which states: *We recommend the Archivist of the United States request NARA/OGIS and DOJ/OIP to together encourage agencies to release documents to the public on their FOIA websites and in FOIA portals in both human-readable and machine-actionable formats, to the extent feasible.*

Mr. Bradley again raised the issue of cost and Mr. Stocker suggested that if agencies cooperate there could be a potential cost saving. Mr. Susman added that it would be nice to know if a modeled best practice is prohibitively expensive, and Ms. Creighton suggested this lends itself to a pilot project.

Ms. Semo asked if anyone had any other comments and hearing none moved to the public feedback part of the meeting.

Public Comments

Ms. Semo asked if anyone in the room or on the live stream had any questions or comments. From the room, Alex Howard said the Committee mentioned the volume of FOIA requests, but another useful metric is the volume of FOIA lawsuits and number one reason for those lawsuits is that agencies do not respond. He went on to applaud the Committee's recommendations but has some concerns that the Committee is not addressing some of the direct problems with FOIA in these recommendations or acknowledging the laws. He cited the Open Government Data Act which President Trump signed into law in January that already mandates that agencies post information as open government data in a machine-readable format, so instead of recommending another system, the Committee should recommend that agencies disclose responsive records on their open data websites, and make them searchable on FOIA.gov or Data.gov.

Mr. Howard also had a specific question with respect to the release-to-one-release-to-all pilot about which he formally petitioned the government with the Cause of Action Institute, and wanted to know if an official response to the petition is still under consideration. Mr. Talebian said he doesn't have anything he can share about that.

Mr. Howard then asked if anyone was aware of the Cross Agency Priority (CAP) goal for the FOIA established at the beginning of 2017. Mr. Moulton said that he wasn't aware, until reading the previous meeting minutes, that the CAP goal had been removed. Mr. Howard asked if there has ever been any official acknowledgment from OMB on why it removed the CAP goal from its website and refuses to acknowledge it ever existed. Mr. Moulton said he didn't know but it's certainly something he is happy to look into.

Mr. Howard asked the Committee to recommend that OMB takes a leadership position and restores the CAP goal; to remind agencies that FOIA is an honorable public service that provides the public with their records under the law; to encourage OMB to recognize the Committee's work; and to support the FOIA portal which Congress mandated. Mr. Howard suggested one of the reasons there is a rise in costs and increased public frustration is that the very top the United States government is not reminding the public that these records exist either in a proactively disclosed form, that there are better tools for getting them or there are existing obligations that they are under, and he encouraged the Committee to highlight the role that OMB has in getting people to follow the law. Mr. Howard then asked if anyone on the Committee talked about culture or politics or are going to because political interference in FOIA requests is a problem. He asked if the Committee is going to recommend FOIA officers are able to be responsive without having appointees step in. Ms. Semo said they brainstormed at the beginning of this term as to how we were going to divide up subcommittees and that topic doesn't necessarily fall neatly into one of the three subcommittees but she appreciated the feedback and will discuss further.

Mr. Talebian commented on the portal, OMB, and the CAP goals by saying a significant part of the CAP goal was the establishment of the National FOIA Portal, and OMB has been incredibly supportive in that effort. He said that he's looking forward to working with everyone to find new ways to expand on that and invited Mr. Howard, or anyone, to come to OIP to discuss recommendations.

Mr. Howard then lamented how the government is not engaging the public to use FOIA.gov. He then brought up one last issue about technology and how the American people are getting a poor investment on the money being spent, and the same companies that are profiting are also lobbying Congress to prevent the government from building something better itself or opening up the process. He urged the Committee to have GAO or Congress look into this. He ended by saying the Committee is a model of openness which public meetings and live stream but he's not sure the Committee's time is being well

spent.

Ms. Semo asked if there were any comments from live stream, and there was just one: “USCIS has come up a lot—obviously they need to be leaned on. I’m here representing Reclaim the Records. My question, what powers or ability does NARA have to compel USCIS to comply with records schedules to alleviate the public to use FOIA to obtain records? Or can NARA suggest that USCIS amend records schedules to speed up surrender of records.” Ms. Semo said it was a good question and she would have to defer to her colleagues in the Corporate Records Office.

Closing Remarks and Adjournment

Ms. Semo thanked the Committee members and said that the Committee would hold its next meeting on Thursday, March 5, 2020. She urged the subcommittee co-chairs to focus on giving a more fulsome explanation for each of the recommendations, to develop a written explanation of why these recommendations came about, explain what the rationale is behind them, and include what the goal is for each one. Ms. Semo adjourned the meeting at 1:10 p.m.

I certify that, to the best of my knowledge, the foregoing minutes are accurate and complete on March 5, 2020.

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 March 5, 2020 meeting, and incorporate any correction or notations in the minutes of that meeting.