

December 2, 2019

**To: 2018-2020 FOIA Advisory Committee**

**From: Records Management Subcommittee of the 2018-2020 FOIA Advisory Committee**

**Re: Supplemental Proposals for Discussion Purposes Only**

*The following two recommendations are for discussion purposes only at the public meeting scheduled for December 6, 2019*

**Proposed Recommendation # 8**

***We recommend that the Archivist of the United States request that NARA/OGIS and DOJ/OIP work together to encourage agencies to work towards the goal of collecting, describing, and giving access to FOIA-released records in one or more central repositories in standardized ways, in addition to providing access on agency websites.***

As amended by the FOIA Improvement Act of 2016, FOIA states that agencies “shall make available for public inspection . . . copies of all records, regardless of format . . . that have been released to any person,” where “because of the nature of their subject matter, the agency determines that [the records] have become or are likely to become the subject of subsequent requests for substantially the same records,” or that otherwise “have been requested three or more times.”<sup>1</sup>

DOJ/OIP currently hosts guidance for agencies regarding FOIA websites, under the title “Agency FOIA Websites 2.0.”<sup>2</sup> As the Guidance explains,

Agency websites have evolved as technical capabilities have improved over time and internet use has become a primary method for information dissemination. While agencies have updated their websites over the years to account for new guidelines or policies, two of the most visible reflections of this evolution are in the websites’ style and design and the volume of material posted on them. The style of agency websites has gone from simple pages, containing a small amount of information and links to the far more comprehensive sites seen today that are designed with a uniform style and contain a wealth of information about agency operations, including administration of the FOIA. One of the benefits of this evolution is that agencies can create a unique online identity that is easily recognized and best serves their community of users.

The DOJ/OIP Guidance does a careful job in providing detailed guidance on how agency FOIA websites should be constructed, including with respect to what key information and resources

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<sup>1</sup> See 5 U.S.C. § 552(a)(2)(D)(i)-(iii).

<sup>2</sup> <https://www.justice.gov/oip/oip-guidance/OIP%20Guidance%3A%20%20Agency%20FOIA%20Websites%202.0>.

should be contained on the website. In addition, following the issuance of DOJ's Open Government Plan 2.0, in 2013 DOJ provided guidance on "Using Metadata as the Foundation for a Government-wide FOIA library."<sup>3</sup> As the Guidance itself acknowledges, however, agencies continue to have wide leeway in how their online web pages are structured, including what formats are used, how or even if documents are described, and what if anything they post to these sites. Further, these sites may be difficult for the public to find, navigate, and search. The consequences of non-standard posting and metadata description of FOIA records, coupled with the myriad agency FOIA libraries (formerly known as electronic reading rooms) that exist, may include (i) agencies ending up duplicating their efforts by receiving unnecessary queries for FOIA records already released, and (ii) the public not otherwise being provided adequate access to FOIA-requested records.

A small number of federal agencies currently post records released via FOIA requests in a central digital repository, FOIAonline.gov.<sup>4</sup> Additionally, some agencies support web pages on FOIA.gov that act as "pointers" to agency FOIA websites. These pointers are not, however, standardized in a way that optimizes public access to the underlying materials or works toward a government-wide FOIA library.

The RM Subcommittee recommends encouraging more agencies to (i) use an existing centralized FOIA records portal like FOIAonline.gov, (ii) develop metadata standards building on the above-referenced DOJ metadata guidance, and (iii) upgrade and standardize their links in FOIA.gov to documents posted on agency FOIA web pages. These will serve dual purposes: First, doing so will save agency time in FOIA processing and FOIA Library administration. Second, it will facilitate and expand public access to proactively released records from across the government, especially if accompanied by more standardized metadata.<sup>5</sup>

### **Proposed Recommendation # 9**

***We recommend that the Archivist of the United States request NARA/OGIS and DOJ/OIP to together encourage agencies to release FOIA documents to the public on their FOIA Websites and in FOIA portals in both human-readable and machine-actionable formats, to the extent feasible.***

The Federal government in the last several years has moved inexorably toward more transparent government and open data. On May 9, 2013, President Obama signed Executive Order 13642 "Making Open and Machine Readable the New Default for Government Information."<sup>6</sup> The OPEN Government Data Act was absorbed into the "Foundations for Evidence-Based

Policymaking Act of 2018" (PL 115-435) and became law in 2019.<sup>7</sup> To bring FOIA in line with open government and open government data recommendations, we recommend that NARA

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<sup>3</sup> <https://www.justice.gov/oip/blog/using-metadata-foundation-government-wide-foia-library>

<sup>4</sup> <https://foiaonline.gov/foiaonline/action/public/about>.

<sup>5</sup> See, e.g., data.gov as one possible model of a central standardized metadata repository pointing to documents on agency web sites.

<sup>6</sup> <https://obamawhitehouse.archives.gov/the-press-office/2013/05/09/executive-order-making-open-and-machine-readable-new-default-government>

<sup>7</sup> <https://www.congress.gov/bill/115th-congress/house-bill/4174/text/pl?overview=closed>

request that DOJ/OIP encourage agencies to release their FOIA documents in both human-readable and structured, machine-actionable formats, to the extent feasible.

Machine-actionable documents and metadata are published in such a way that a computer can process them. The *FOIA Annual Report XML schema*<sup>8</sup> is a leading example of the use of a machine-readable format to publish information otherwise contained in FOIA annual reports. Using a similar XML schema would be one way in which agencies could accomplish making FOIA documents searchable, sortable, downloadable in bulk, and machine-actionable. By publishing FOIA documents in this way, the government will facilitate machine-learning, artificial intelligence and advanced indexing, allow the public to find and use FOIA documents in new and more efficient and effective ways, and leverage technology to improve FOIA administration across the government. Combining machine-actionable formats with standardized descriptive metadata will move the government one step closer to the stated goal of a government-wide FOIA library.

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<sup>8</sup> <https://www.foia.gov/developer/>