

National Archives and Records Administration

June 6, 2019

Freedom of Information Act (FOIA) Advisory Committee

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DAVID S. FERRIERO >> Good morning and welcome back. Nice to have you back in my house. This Freedom of Information Act Advisory Committee meeting marks the halfway point of the committee's two-year term. I understand the three subcommittees—Time/Volume, Vision for a Future FOIA, and Records Management has been busy holding conference calls on a regular basis, asking questions, delving into data and discussing ideas for improving the administration of FOIA. I'm pleased to welcome back Margaret Kwoka, assistant professor at University of Denver Sturm College of Law who will present her research on how requests from individuals seeking records about themselves dominate some FOIA programs. Professor Kwoka is no stranger to this committee. In 2016 I appointed her to the second term of the committee and thanks to her hard work along with her 19 fellow committee members I received seven recommendations and 43 best practices in a detailed final report in April 2018. Recommended improvements focused on search technology, accessibility and performance standards. I look forward to ongoing thoughtful discussion and vigorous discussion of several recommendations from this term of the committee which ends in June 2020. Before turning the meeting over to Alina Semo a side note—earlier this month in celebration of the 100th anniversary of 19th Amendment the National Archives opened an exhibit “Rightfully Hers: American Women and the Vote” which tells the story of the relentless struggles of diverse activists to secure voting right for all American women. While not directly related to one another, it is worth noting the woman suffrage and FOIA, in own ways, play important roles in our democracy. Thank you to the committee for your work toward for improving FOIA. I hope you take a few moments after today's meeting to visit “Rightfully Hers” upstairs and if you can't make it today, it is open until January 23rd, 2021. Thank you. I turn it over to Alina.

ALINA M. SEMO >> Thank you. Good morning, everyone. Thank you for joining us for the fourth meeting of the 2018-2020 term of the FOIA Advisory Committee. Whether you're here in person, thank you for coming in person, via telephone or via live stream. I do know we have five members on the phone and hopefully I will check in with them very shortly and hopefully they are all there. But I'm excited to kick off the fourth meeting. It is hard to believe that we are

already at the halfway mark and I know there's been a lot of work going on in between the meetings and I'm so very pleased with all the great work that's going on in the subcommittee, so thank you, everyone, for your really hard work. So Emily won't be here and on the phone we have James Jacobs.

>> Hello.

ALINA M. SEMO >> Hello.

ALINA M. SEMO >> Joan Kaminer.

>> Hi.

ALINA M. SEMO >> Ginger McCall.

>> Hello.

ALINA M. SEMO >> Michael Morisy.

>> Hello.

ALINA M. SEMO >> Suzanne.

>> Hello.

ALINA M. SEMO >> I will do my best to keep checking in with you and there's a delay between mics going off and phones coming on, so constantly have to do that to myself too. We have a robust agenda and I will do it my best to keep it moving. Have everyone introduce themselves.

>> Chris Knox from Deloitte.

>> Lizette Katilius from Securities and Exchange Commission.

>> Kevin Goldberg, legal counsel to America Society of News Editors.

>> Ryan Law, Department of the Treasury.

>> Abioye Mosheim, Consumer Product Safety Commission.

>> Bradley White, Department of Homeland Security.

>> Kirsten Mitchell, National Archives. Not a member of the committee but Designated Federal Officer.

>> Melanie Pustay, Department of Justice.

>> Tom Susman, American Bar Association.

>> Lee Steven, Cause of Action Institute.

>> Patricia Weth, National Labor Relations Board.

>> James Stocker, Trinity Washington University.

>> Sarah Kotler United States Food & Drug Administration.

>> Jason Baron of Drinker, Biddle & Reath and formerly of the National Archives.

ALINA M. SEMO >> Thanks, everyone. I have a few housekeeping notes I wanted to go over. My usual spiel as most of you know the FOIA Advisory Committee reports to the Archivist of the United States and publicly discusses and issues and offers members of the public opportunity

to provide their feedback and ideas for improving the FOIA process. We encourage public comments, suggestions, and feedback that you may submit at any time by e-mailing FOIA-advisory-committee at NARA.gov. At end of today's meeting as we always do, we will have time for public comments. An OGIS staff member, our attorney advisor, is monitoring the live-stream throughout the meeting, so if you have any comments or questions, please feel free to submit them in writing and we will read them out loud during the public comment period. We are live streaming and make the video, transcript on the committee's web page as soon as possible. Bear with us. It takes a little while. To promote openness, transparency, and public engagement we post committee updates and information to the website, blog and on Twitter at FOIA ombuds. Stay tuned for activities and events by following us on social media. Information about the committee including members' biographies and committee documents are available on the FOIA Advisory Committee web page and OGIS website. We have discussed this in past meetings. I thought it would be important to reinforce a few important reminders from the sponsors, AV folks. They help us run everything smoothly. There are cheat sheets by the microphones to remind everyone what to do and what not to do. The dos are please say your name before speaking every single time. That helps our person who's keeping track of minutes. Please bring the microphone in front of you and hold eight to 10 inches from your mouth before you speak. Please move the microphone back when you're finished speaking. Keep wireless devices to a minimum and away from the microphones and those committee members as I mentioned tip sheets are around the table. This meeting is being close captioned and following these instructions, we are going to help make the public community more accessible to all. Thank you for following those rules. We have a couple more housekeeping items before I introduce the guest speaker today. First, we need to approve the minutes from the March 20th meeting, which Kirsten sent around by e-mail. I don't believe we had any comments we received or any edits. She and I have either certified or will certify shortly the minutes to be accurate and complete. We are required to do that under the Federal Advisory Committee Act within 90 days of the last meeting. Do I have a motion to approve the minutes? Okay. No second required, I'm always happy to take one. Thank you, Ryan. Those on the telephone? Any objections? All in favor?

>> Aye.

>> Aye.

ALINA M. SEMO >> On the phone anyone opposed? By popular demand, we have now passed the minutes. We also got request to send around a tentative schedule for the final report and recommendations of this committee. We did it in such a way that we worked our way backwards from the final meeting which is going to be in June of 2020 and Kirsten circulated to everyone we are very open to comments and thoughts about whether need to be adjusted in any way and we haven't heard from anyone yet but that doesn't mean that the floor is still not open for committee members to comment and give suggestions and feedback on it. But pretty ambitious schedule. I think everyone has had a chance to look at it. Of course, the idea is by final meeting which is June 4th, 2020, which seems a long way away, but it will be here before we know it. We will have the final meeting where we will finalize and vote on the final report and recommendations. I'm always looks for volunteers to be on small working group to put the report together. That seemed to work very well last term as well. If you are at all interested in that,

please see me during the break or after the meeting and let me know if you're interested. There's nothing in the committee's charter or bylaws prevents subcommittee from making recommendation to the committee on rolling basis. We like rolling releases, so we like rolling recommendations. So as chairperson I want to allow for ample opportunities for the committee to hear ideas from the subcommittees, consider them and have time to deliberate. So feel free to do that at any time. As I said, we walked backwards from June 2020 and with an eye toward finally presenting the subcommittee recommendations by March 5th, 2020 meeting. So I think that's all I have in terms of housekeeping. I am now ready to -- any questions before I go on? Questions? Questions on the phone? Great. So we are ready to introduce the speaker for today. Professor Margaret Kwoka. I'm very pleased to welcome her back. She is back because no stranger to the FOIA Advisory Committee. She was on the second term of the FOIA Advisory Committee 2016-18 term and co-chaired with Sarah, not to call you out, the Proactive Disclosures Subcommittee. While she is here I urge you to pick her brain; she lived through committee and survived and chat with her if you want to give her feedback. Her PowerPoint presentation is included in the packets and also will be posting it on the FOIA Advisory Committee website. Margaret is Associate Professor at University of Denver Sturm College of Law. Her research interests focus on government secrecy, FOIA, procedural justice and judicial review of agency action. She has written numerous articles examining the current state of FOIA and possible reforms which have appeared in the Yale, Duke, Boston University and UC Davis Law reviews as well as the New York Times and testified in Congress on government transparency, various Federal Court decisions cited her academic work and she is regularly quoted in the national media concerning FOIA. Before joining the University of Denver, Margaret taught at John Marshall Law School in Chicago and George Washington School of Law. She was attorney for Public Citizen Litigation Group where she focused on FOIA litigation and clerked for Judge Michael Murphy for the Tenth Circuit and Chief Justice Phillip Rapoza of the Massachusetts Appeals Court and earned her law degree from Northeastern School of Law and bachelor's degree in biology I note from Brown University. Just so you don't think that Margaret's focus only on FOIA, I happened to Google her and she received the pro bono achievement award from the Animal Legal Defense Fund recognizing her exemplary efforts on behalf of animals. Yay, Margaret. "First-Person FOIA" documents how individuals seeking records about themselves dominate the FOIA landscape in some agencies. Her research is published in the law journal article in June 2018 and posted on the FOIA Advisory Committee website. I also want to quickly add that Margaret working on a book which is to be published sometime this year, I think? Question mark. She hopefully can address that maybe. Entitled "Saving the Freedom of Information Act" which is what we are trying to do, so if there are any pearls of wisdom you want to share, we are all yours. With all of that, please join me and welcoming back the FOIA Advisory Committee Professor Margaret Kwoka.

[APPLAUSE]

MARGARET B. KWOKA >> Thank you so much for that lovely introduction, Alina and the introduction makes me sound more well-rounded than I actually am. The Animal Legal Defense work was also FOIA related. It is nice to be back. I appreciate the invitation. And I just wanted to say that although I have about 20 minutes of comments prepared, you should feel free to interrupt me at any time as I go along. I am looking forward to discussion afterwards as well. So for those of you that know me, you know that I have spent the past several years working on a

series of research projects that was prompted by kind of a combination of three basic observations. All of which will not surprise you. One is that journalists constantly complain that FOIA is simply isn't as useful as they want it to be in reporting the news, even though they were thought to be the prime intended users of the law. The second is despite the loud complaints we get about FOIA's failings, Federal Government is now receiving over 800,000 requests a year, so there must be someone who's interested in serving well enough to keep them coming back for more. Then finally, my third observation is that costs associated with FOIA and relative possibility of news media requesters have caused significant criticisms of the law as not adequately fulfilling its basic goals. And so I have delved into this trying to uncover detailed data from agencies across the Federal Government examining who's using FOIA and what are they trying to get. Details of my research I will reveal today the typical requester now is not the New York Times. It is someone like JP, individual that the government is trying to deport. JP is a lawful permanent resident, known as green card holder, had a brief run-in with the law, the criminal justice system nearly a decade ago in an incident in which a public dispute broke out between him and a friend. He was 20 years old and for the first time in his life found himself in jail for the night and he remembers going to court talking to some lawyers, signing some papers. He spent the weekend there and no more. He has got no records from the incident. Since then he stayed out of trouble, finished college, started a family and now he has received a notice to appear which is a "charging document" in immigration court. It claims that he is removable because he was convicted of assault. He hires an attorney to defend him against deportation, his attorney says that he has to find out whether the conviction really was for assault and if so, if that's the only conviction on his record. Sometimes the Federal Government interpreting 50 different states criminal penal codes and criminal justice records gets conviction information wrong. Sometimes if it is just a simple assault and may be on his record he may be released and it is imperative the attorney see the case he is relying on to defend the case. The attorney will immediately file a FOIA request. It is natural to wonder why would JP need to use FOIA? After all the records that JP needs are literally sitting on counsel's table across from him in immigration court in the very courtroom he will appear to defend the case. Immigration proceedings like many other agency proceedings they don't have mechanism for obtaining discovery. So FOIA is only option for people like JP. JP is not the person that Congress had in mind when they designed FOIA. Rather it really was journalists. A law designed for their needs, not for individuals trying to get their own records. When I say the news media was intended beneficiary of FOIA it is more accurate to say news media essentially drafted the law. In 1953 Harold Cross wrote a book called the People's Right to Know and most prominent journalism organizations at the time supported it and in the book Cross called on Congress to legislate act as public records at Federal level. He himself subsequently became the legal adviser to the special subcommittee in the House of Representatives that was tasked with drafting the law and journalists mostly crafted the committee and journalists crafting the contours of the law, not just the vision. But the vision was equally important to Congress and one the body is familiar with. The whole idea of public records access law designed for journalists is news media would use the law to inform the government about public activities there by enhancing the public's ability to participate in governance and hold accountable. FOIA itself references with the need to have an informed electorate as vital to democratic society. So in contrast to that vision if other studies, my data is consistent with the findings and quantify news media requesters and striking consistency in recent studies that news media are only making a tiny fraction of requests. My findings are similarly situated with these results. So if it is not the in United States media and

watchdog groups, who is it? And even superficial investigations of the data reveal an obvious truth. FOIA is largely used for purposes other than promoting democratic accountability. So my research reveals two prominent groups of requesters that dominate the landscape. First are commercial requesters whose use of FOIA as part of their profit making enterprise is topic that I previously presented on to this body and written about before. Today I will focus on the second group of requesters. These are requesters like JP who are turning to FOIA by the hundreds of thousands. They are using FOIA as the title of my article suggests in a first-person manner, that is seeking records about themselves be own law enforcement records, own medical files, own immigration files, own family history and so on. And to understand the dynamics of first-person FOIA I had case studies at number of agencies whose data on FOIA usage I had on myself filing FOIA requests. This is the principal lists that I studied and studied certain components and listed them and components do make up the vast majority of the requests at parent departments. Each of the agency first-person requesting dominates the landscape. You can see the percentage of first-person requests represented in green, all others represented in blue on this chart. At this point you may be thinking to yourself -- the label somehow disappear on the slide and I apologize for that. Let me detail that those three on the left are all components of DHS, so if you -- these are actually in the order. Citizenship and Immigration Services. Immigration and Customs Enforcement, Customs and Border Protection and then Veterans Health Administration, Social Security and EEOC follow. You may be thinking to yourself, well, those three other agencies are really small operations but actually that's just not the case. At this point the Department of Homeland Security is receiving over 45% of the Federal Government's total requests, so those three components of DHS on the left columns one, two, three, are outside for that reason. Other agencies listed there still within about the top 12 agencies by volume and look small in comparison because DHS dwarfs everyone else at this point. More than the number, data gathering with interviews with mostly attorneys who make first-person requests on behalf of their clients to find out what role FOIA is playing at each of these agencies. So all of these labels somehow disappeared, which is unfortunate but I will say here I have got these -- this is DHS request. These are by components, so you will see that Citizenship and Immigration Services on the right, that's ICE in blue and CBP is in orange there. So you can see that those three components make up the vast bulk of the request that DHS receives. Almost all of them are by noncitizens requesting the immigration records. The reasons are varied. So JP's story explains one of the reasons. Individuals request their records because they are in removal proceedings and they have no other access to discovery. Not only are the records sought under FOIA in these circumstances critical for information about past convictions as with JP, but also allow lawyers to obtain prior statements the client may have made to immigration officials to reconcile any inconsistency and prepare for examination on the stand. And FOIA attorneys explain to me they are essentially litigating in the dark. Probably much more often though than in removal proceedings is relatively smaller percentage of these requests, probably much more often than that. Individuals are seeking their immigration records as part of their bid for affirmative immigration benefit, such as application for new or different type of visa or naturalization. These requests serve two primary purposes. One provides details about the applicant's immigration history to ensure that there's nothing that would prevent the person from obtaining the benefit that they seek before filing the application. And the other is to ensure consistency in the application with past records if it is filed. The second purpose -- separate purpose of making a FOIA request -- in this context to obtain document the public holds but applicant needs to submit with the application. For example, someone who's applying for green card from within the U.S.

has to prove that they lawfully entered the country. They may no longer have the documentation. Or someone may need to file a previously submitted family based petition or with their application to adjust their status. So they will use FOIA to get the documents from the government that they need to submit with the application. So despite the kind of outsized presence or volume of request related to immigration, first-person FOIA requests are hardly constrained to that context. Let me talk briefly about the other agencies included in my study, although I'm afraid -- afraid to hit the button and see the listing labels again but there they are. At the department -- I will describe it. Department of Veterans Affairs, I studied 86% of all VA requests and largest component by far. Of 26,000 and change the year I studied, at the very least 77% of the requests are first person in nature because they were filed both under FOIA in Privacy Act; the latter provides right of access to own records. Requests at VA more varied than DHS but similarly have the private nature of the interest served. So if you could see the labels, break down the subject matter. Frequent requesters looking for medical records include individuals for sure but also insurance underwriting firms which are essentially making first-person requests as representative of the individual seeking a policy. One frequent requester also a law firm that specializes in Social Security loss in support for claim for benefits. Another group of individuals more than 500 in the fiscal year that I studied in 2015 are families of deceased veterans seeking a type of military separation document that's required for accessing a military funeral benefit. Beyond medical records, the next largest group of requesters in the category for uniform offense reports which is a type of police report essentially for incidents that occur on VA property. And logs reveal that folks want basically copies of the statements that they made to VA police or reports of incidents that the requester was involved in. I mention VHA of the total requests that year. I will also briefly talk about the Social Security Administration which appears to have a particularly unique FOIA practice as you would have been able to see for the chart and largest category SSI forms. Blue indicates both records about original applications for Social Security Number. Strictest sense of the term it might not be a first-person request because they are asking about some other individual but if we think about this a bit more broadly it is clearly information about the requester they are seeking, it is their own family history. In addition I think we can -- this category also falls within first-person request in the sense that the interest served are largely not about government oversight or accountability. EEOC prime example of first-person requesting. The EEOC that year received over 17,000 requests and a full 95% of those requests were for what is designated as a charge file. That's an investigative file that is created when someone files a charge of discrimination under one of the various statutes that the EEOC administers like Title Seven or ADA. Under Title Seven, a person can seek a charge file under FOIA is person that filed it and limited circumstances the responding party and it can only be filed during the 90 days after the EEOC has completed the investigation and the charging party has been given its notice that has the right to sue. The employer or respondent can only request that file if they actually do sue, so that's very small subset of those requests would be from them so by definition nearly all of these requests are first-person requests. When a person files a charge of discrimination, the employer or respondent must file its position statement which is basically like a brief arguing its version of what -- of the events that are complained of. And the position statement will often also include various exhibits, like the employer's EEO policy or the employee's personnel files concerning their performance or behavior. And like with immigration proceedings, the charging party has no right of access to the documents through any sort of administrative discovery during the investigative process at the agency. So as a result employment attorneys that I spoke with confirm that they file a FOIA request immediately upon

having a new client walk in the door, where as soon as they obtain notice of right to sue from the agency. So from this primary research about the various first-person uses of FOIA at Federal agencies, I believe that there's a significant mismatch between first-person FOIA requesters needs for their own records, which are very real and many cases extremely important, but there's a mismatch between the need and the way that FOIA is able to meet that need and certainly a mismatch between that need and what FOIA was intended to do. So there's three basic problems I think with using FOIA for first-person requesting. The first is that it undermines actually the due process interest of the requesters in many cases. I will talk about each of these a bit. But I will preview. The second is that I actually think in many cases these are inefficient ways of information delivery for the agencies. And the third is that it oftentimes I think is undermining FOIA as effective transparency tool. Let me talk about each of those a little bit. The first is as I described a significant amount of first-person FOIA requesting serves as means for private individuals to arm themselves when they are subject to some sort of government enforcement action or seeking to make their best case for a government benefit. Some sort of agency process or proceeding. Gaining access to information in these instances can promote fairness in the proceedings, accuracy in the outcomes of government decision-making and what others in this field, other scholars labeled sort of due process like benefit, even if it is not the due process right as courts would define it. So FOIA may be serving extremely important interests in these records. But I think my research shows that it is serving the interest poorly. One big problem is timeliness, so both immigration attorneys and employment attorneys explain the problems of having to go through FOIA to obtain documents. In essence sometimes the information doesn't come in time to be useful to the client's case. So the quotes are representative. There's been times first attorney says where guys have been removed and then FOIA result comes back and my strategy would have been different. Troubling thought. Or this from employment lawyer. They got a notice of a right to sue and they want to file a lawsuit and then basically I won't unless I can view the EEOC's file. The attorney says sometimes he won't take a client or case because there isn't enough time by the time he is consulted to get the results of the FOIA request before the deadline to file a lawsuit. Another problem in this context is that when information is withheld or redacted, few clients or attorneys have the resources to fight a collateral battle over records. So this attorney says lawyers can't afford to take time and energy to litigate FOIA issues on the side of the case that they are already litigating for their client. Relevant information may never reach the individual whether with holdings right or wrong can't be tested. A lawyer frustrated made this statement that sometimes attorneys or pro se litigants end up moving forward without the information they need. So this, of course, increases the likelihood that an individual is unable to access benefit to which they are entitled or unable to defend against enforcement proceedings where significant interest is at stake. Part -- going back to the three part mismatch. Apart from due process failures on the individual side, FOIA also I think is oftentimes in the circumstances an inefficient mechanism for the agency if we look at their processes overall. So, for example, at immigration agencies the person who's in removal proceedings has to file a FOIA request with the main FOIA office which then has to assign the request to FOIA officer for processing and that person will inevitably come back around and look to and find the same sets of records that the trial attorney has on their desk in immigration court. So this not only duplicates work in some sense but also means that the judge in immigration proceedings and immigration court can't resolve any disputes that arise over the records and many attorneys noted that when they haven't received a response to their FOIA request, they will use that as a basis for continuance in immigration court. So thereby, potentially holding up underlying proceedings and spending

greater resources in that record as well. I can certainly -- I think there's some reasons why the agency hasn't moved in that direction and happy to answer questions about that but there are various other examples like that that you can find going through the agencies. Then finally, I think that on the third first-person uses of FOIA particularly because of their volume I believe are undermining FOIA to some degree as transparency tool. So as my research documents first-person requests do advance important interests but primarily private interest and not the public interest in government oversight. So certainly there are public benefits to first-person requesting. Let me not be unclear about that. For example, there's a general public interest in fair and accurate determinations by agencies, but these types of interests don't go to the heart of FOIA's imagined purpose about informing the public about government activities. And in fact, the agencies that receive a deluge of requests that serve primarily private interest may be less responsive to the requests that do implicate government the accountability. News media, watchdog groups, private groups may be crowded out due to resource constraints and because FOIA offices are so overwhelmed with other requesters. I think the potential for crowding out is underscored by the perennial concerns about delay as falls short as the intended mission. As I wanted to end by briefly touching on few solutions that I think we could consider. These are I will say there's no one size fits all approach across the Federal Government but rather than any effort to limit FOIA rights which I think would be serious mistake for various reasons that I'm happy to elaborate on as well, I believe much more promising reforms seek to reduce the need to resort to FOIA by requiring or incentivizing agencies to meet other information needs more head on. That is finding tailored mechanisms outside FOIA that would deliver to the constituent population. So the approach could I think reduce maybe even vastly the number of FOIA requests that are made and free up FOIA offices, research to better serve core mission and potentially serve the private interest better as well and could lead to some agency efficiencies. The obvious example that you're already thinking of now that you have been hearing me is discovery in some agency like removal proceedings, EEO investigations, some benefits applications, could these alone eliminate the need for large of FOIA requests and also improve the fairness of the proceedings and could empower those most familiar with the records to deal directly with any disputes over access. Another possibility in some context is to eliminate the need for individuals to request records only to then include them in an application they are submitting back to the same agency. If agency holds certain applicants of the needs and know they exist, the applicant could, for example, have a process to designate they are relying on record the agency already has. Dynamic exists to some -- is to some requests at immigration agencies, Social Security and Veterans Administration. So this is what I call request and return and there are individuals who are held up in the bids for, for example, naturalization by a year or more waiting for document that they are just going to return to the same agency. Another promising avenue for meeting the needs of first-person requesters head on is actually affirmative disclosure. So this might sound kind of non-intuitive because personal records of private information but, for example, online access to medical records. Something that's already very common in the private sector could be an opportunity for eliminating the request for tens of thousands of medical records a year at the VA. The VHA is already revamping the electronic records and patient portals may alleviate some of the burden. Then finally there's some agencies that are already creating separate request processes for certain records that are often needed by individuals. So, for example, the I.R.S. has a completely separate system for requesting your own tax returns. None of those requests go through the FOIA office. They are not processed by FOIA officer, they are not counted as a FOIA request. More agencies could use the strategy for routine

documents that really aren't the kind of requests we are imagining. That is not to say there's no reason why you can't submit own FOIA request for tax returns. You can. I.R.S. is not saying you can't do that. But there's a separate process that's more efficient and straightforward and everyone avails themselves of the opportunity. So, for example, the Social Security Administration has what appears to be completely separate process for getting at this and none of those are counted as FOIA requests and separate what is and what isn't FOIA for the conversations about resources, conversations about volume and conversations about FOIA policy. I think it muddies waters about any debate whether FOIA resources are being well spent when including those sorts of separate processes within the FOIA and counting every one of them as FOIA request. With that I will ask if there are any questions or comments.

THOMAS SUSMAN >> Treating these as FOIA requests muddies the water. My recollection is that was the intent from the agency perspective because going back these have to be joint FOIA Privacy Act requests because unless they joined the Privacy Act there's a fee, there's exemptions, things that don't apply in a Privacy Act request but you joined with FOIA because of the time limitation and enforcement mechanism. But at some point my recollection going back is that agency said "aha we can undermine the transparency purposes of FOIA by having all of these tremendous numbers of requests that we have to do, get me resources, show we are complying more because routinely get the information out." So I think going back to anything that invokes privacy shouldn't be FOIA just as simple. The Justice Department could give this as reporting guideline, would then allow you to do more accurate research and allow us to figure things out. That's one point. The second is there's criminal justice analogy of the Brady Act decision, so if you're facing a criminal prosecution and the prosecutors don't turn over the file, you win. That would be a pretty easy to deal with things like immigration where you have to wait for a year before getting any result or get deported while waiting for file. It could -- this is what you would call due process reinforcing. The final question we have known about the issues for a long time. We have VA representatives and immigration representatives on this committee. Why have agencies and the executive branch generally been so resistant to these special views, special processes, proactive measures to be able to do more efficient job. It seems so intuitive to those of us hearing your analysis that you sort of wonder, why are we doing things the old way?

MARGARET B. KWOKA >> Thanks so much for the comments. Intentional muddying of the waters, I can't speak to intent the way you can but I think probably from where I'm standing I can say that, you know, for example, Europe which adapted GDPR has a completely separate process for requesting your own records, your own -- so almost all European countries have a different law about, you know, FOIA, right, and the Privacy Act, but they are actually different. So it means that when you're having a conversation about open records requests, freedom of information, nobody is talking about these kinds of requests. When I have done some presentations about this work in Europe, they all look completely confused. I think it speaks to the fact that there's a way to separate these things out and I think it would be useful for us to start to work on that project. Some of the examples that I'm using are even easier though than what you're suggesting. For example, Social Security Administration when you're asking for your SS-5 records, there's a standard fee, there's a separate website request process, separate information to submit. Doesn't look like a FOIA request, right? It is not billed as FOIA request, not counting hours, just every one you get X number of hours, \$20 or something, so they have a way to deal

with it, they are counting it all. I think some of these are really easy to separate and start with the lowest hanging fruit, some more complicated. Not saying this is administratively simple at this point of where we are but I think it is a worthwhile project and it is something that we are seeing as trend across the world. On the Brady question, of course, the Supreme Court has never held that in civil proceedings there's a due process right to discovery, much less an agency proceedings, so as formal matter a Brady-like rule simply doesn't exist right now. That is not to say we strong recommendations and adopted discovery proceedings knowing it is, in fact, possible. Why agencies aren't moving in this direction, again, I hesitate to speak on behalf of others that would know the answers better. I think that these are from my understanding these are types of strategies that agencies are thinking about. I think there are -- especially in FOIA offices. I think oftentimes part of the problem is there's a budget problem. Money that used to be FOIA money and now money for trial attorney and immigration courts. I know at DHS in particular the concern over overburdened immigration courts is so strong because we are having year backlogs for people with asylum claims to get a hearing at all that putting more work on the trial attorneys and immigration judges need resource adjustment. Would the resource investment be smaller than what we are doing now? I think there's an argument it could be but I think there are -- from what I'm told there are administrative hurdles to getting to that sort of solution. That's not to say I don't think they are worth pursuing and an area where, you know, even Congress could have a role to play in some of these solutions because those mandates -- or even budgetary allocations can make a huge difference.

MELANIE PUSTAY >> This is Melanie Pustay from Justice. I wanted to address the first point about the tracking of first prior requests separately from FOIA requests. If we have had since 2007 a really clear delineation specifically along the lines that only when the Freedom of Information Act is utilized in any way in the processing of a request is it counted for purposes of the annual FOIA report. Before that the exact opposite had occurred in agencies like VA, for example, used to report they have millions of requests because they were counting all the requests they got from the veterans for medical files and processed under the Privacy Act. I had the same concern that we are talking about here is skewing the FOIA statistics, so we drew a line request entirely under the Privacy Act and FOIA not touched at all in the processing of the request it does not get included in the annual FOIA report Privacy Act so narrow and exceptions and first-party request if it is a law enforcement file, it could be totally exempt from access so those requests become FOIA requests and search limitations are different than Privacy Act versus FOIA, so a lot of requests end up being processed both in FOIA. That's why it is trickier for us.

MARGARET B. KWOKA >> I think Melanie's comments highlight the need for some of the areas may really require congressional intervention. I mean I think some of the things to be clear, can be done on their own but I think there are other areas where there really might be a need for additional education.

BRADLEY WHITE >> Bradley White and I want to make sure I'm speaking for myself and not the Department of Homeland Security here. With that said, I did seven years at ICE and I'm familiar with the records you talk about and applied the FOIA and Privacy Act to the records. While I know that the processors at ICE and USCIS would love to see the workload go down, there's still the issue of information that is exempt. And so forgive me for my ignorance here, I

haven't done discovery ever would there be immigration process in exclude immigration exempt from the FOIA because within the immigration records there's a ton of information that people just can't get. Immigration files that may have application for benefits and may have something else and also have report created for the immigration enforcement operation that caught a person? There's tons of other information included in that file beyond just your individual records. But because a person was caught up in a particular operation all of that other information winds up in the file. I can tell you we have seen immigration files that take up three or four that go this high and wherever you see that you know there's a ton of sensitive stuff in there that definitely cannot go out. So while reducing the workload would be great, there still needs to be a mechanism to protect this information and there's a place for FOIA there.

MARGARET B. KWOKA >> Absolutely. So, you know, in regular civil discovery in Federal Court or in state court across the country, privileges are applied routinely to certain privileged information. Those privileges in civil discovery are mostly developed by common law, so we have kind of attorney-client privilege or work product privilege or patient doctor privilege, those sorts of things. Those are litigated routinely in discovery processes and don't think there's any reason that rules could not be crafted to have privileges that apply particularly in these contexts.

BRADLEY WHITE >> I'm not speaking about privileges. That's Exemption 5 and I'm speaking about law enforcement sensitive information. The way the agents approach a situation, the way they take someone down, use of informants, all of those things wind up in an A-file and wouldn't be covered by traditional privilege.

MARGARET B. KWOKA >> Correct. So I think in this particular context and let me not wade too far into waters that are maybe out of my depth but in the context, I think what -- there's various ways you could imagine a discovery. For example, DHS could promulgate its own rules right now there's nothing stopping them from creating its own rules about discovery and immigration court, which could delineate each category that would be exempt or simply wholesale incorporate the FOIA exemption into the discovery rules. All I meant to do by way of analogy we already have information exempt from civil proceedings and other context and those things are litigated with use of privilege log or log of exemption in Federal court essentially from discovery. It looks not very different from say a Vaughn index. So you could use the same mechanisms to have the producing party, trial attorney and immigration court redact those things that they think are withheld, explain them if there's a context and then have the immigration judge make a decision just as judge in civil case would. So I think there's -- you could have appeals process for that also like do you in civil discovery. So I think there's no logistical reason why the security exemption concerns that the department I think rightfully has could not be incorporated into a discovery regime either wholesale by incorporating and promulgating own rules what might be -- not be available in civil discovery. In my mind FOIA exemptions you won't end up with people making a FOIA request because they look at same information under either process.

KEVIN GOLDBERG >> Kevin Goldberg I guess my question and I apologize if I missed this. You cut off at basically three agencies. Why did you choose the cutoff and were there others that were close or was it in part because there was a huge gap to the other agency that had the same first-person request percentage. I guess the next question is we decide this is very important and I

think one of the reasons we enjoy this, things it knew but quantified them really well, which I had never seen this before and where do we go next if it is something we are going to pursue?

MARGARET B. KWOKA >> Thanks. I started by going through the entire list of agencies and their components separately and looking to study agency with lots of commercial requesting and goal was to find the agencies knowing they were out there so based on work of the agency I tried to make intuitive guesses what agencies would have a lot of first-person requesting and made request for data at those agencies. I think in the study and I can go back and look at exact number, maybe submitted 25 requests, it was about usable data that came back. I can say since that time I have found other good examples across the Federal government because for the book that Alina mentioned which will not be published this year, but I appreciate the optimism, I have been trying to tell more complete picture who's requesting across the Federal government so for that research I filled in the last couple of projects with another 80 some requests. I'm up to about 50 agencies of data now across the Federal government. So I can tell you there are other good examples. State, for example, has -- actually find pockets of immigration everywhere suggesting look at immigration procedure reform but regardless, state, for example, you see -- this is too preliminary for me to be cited about it because I'm still staring at the data, maybe half of them are first-person and State is huge and I got a couple others that I can't pull off the top of my head and this is a project I'm working on fleshing out the rest of and will be able to tell completed picture and who's requesting across the Federal government and also say that just with DHS alone single person is single cohesive requesters across the Federal government and more than half just looking at these agencies alone.

ALINA M. SEMO >> I will make a quick comment and let Jason go next. I want to point out to everyone and we are not tooting our own horn but we actually see a lot of first-party requesters come to OGIS for assistance so as a result of that we are in touch with USCIS in particular, their FOIA officer and she suggested that we pull together immigration forum and we hosted one right here at McGowan last fall, it is available on YouTube, NARA's YouTube, where we actually invited several -- a variety of different agencies that actually get immigration related requests. So we had State Department, we had all the usual players. We had USCIS, ICE, State, HHS but we are really -- our purpose was to try to educate requesters, scrambling trying to figure out how do I get access to my information and where do I go and it is such a complex web. We also published FOIA Ombuds Observer which is on the website which explains to requesters and to everyone in the public this is where I go if I seek this kind of document. But we definitely see that very, very often in work in OGIS. Only other comment I was going to make and wrote a note to Melanie, one experience I can share as long time litigator of civil litigation versus FOIA litigation, big function in FOIA litigation there's great vehicle called protective order and we don't have that in FOIA litigation and we definitely I think need to explore that a little more in different context because I think it really makes a big difference. I see a lot of heads nodding, so that's good. Jason, over to you.

JASON R. BARON >> Can I ask a process question? In excellent article I notice it was published in the journal in June 2018 and footnote 74 I would like to read with my apologies for anyone here, including our DHS representative. At footnote you said "I filed FOIA requests with each of these agencies on April 16, 2016. USCIS acknowledged the request but never responded. ICE responded by directing me to the publicly available version of their logs on their website. I

filed an appeal on June 23rd, 2016 to which no response was ever received. CBP responded by directing me to the publicly available version of their logs on their website.” Then you filed a June 18th, 2016 response no response ever received. That's as of this writing none what is publicly available on the website and imperfect and incomplete and resorted to alliance on public data. This leads me to note that we could all appreciate the irony of a FOIA researcher filing FOIA requests and not getting information about FOIA statistics. Let me ask three questions. First, did you ever hear from any agency that you filed FOIA request for? Second, have you used OGIS to facilitate the research? Three, since you're an expert litigator given your experience, why wouldn't you file a lawsuit against DHS or any other agency that's not responding in timely fashion?

MARGARET B. KWOKA >> Those are all excellent questions. No, never got data from these three. I do have a lot of requests, you know, for logs -- mostly requesting so over the years I have had quite a few of them so it is difficult -- I have a research assistant that does nothing but my requesting for me and manages my request and follows up and bugs people and appeals and things like that. So why not fight every one of them? At some point it is just time. You know, so I try to give -- I try -- I give myself a yearlong timeline so any new project I give a year before I'm trying to get data before I start requesting and cut at year. At a year I have given up and done everything I can do. I did not go to OGIS. I went to people inside the agency that I know personally and tried and failed and then I do a lot of nagging, I do administrative appeals. Lawsuits are just time-consuming and I have a job. I got pro bono presentation and Public Citizen represented me against the I.R.S. -- which I won and still getting data sort of. It is just -- it is difficult. I will say this. I think that overarching this, agencies do not keep data in one form or format. They don't all keep the same fields, don't all keep the same data, don't use the same formats, can't produce it in the same ways. I asked for a lot of fields. There's a lot of things I'm interested in about the FOIA logs and most agencies have to keep in some way or another and not database or can't pull it in one database or can't produce it in a way I can read it. So I think as big technology barrier in had some cases -- other thing that's true is that -- when I was on this body last term pushed for recommendation that was eventually adopted but agencies keep and published version of their FOIA logs. I know it sounds like my personal project but I think if we all had better data who was using FOIA and aggregate across Federal government and use the same way it would vastly increase the understanding where we have opportunities for improvement. So that's something that Congress could legislate, improve the actual logs and to have certain fields that are included within that. I think would make a huge difference for all of our understandings how the process works. So I don't want to blame any particular agency. I really think that right now they keep the data they are required to report very well and then the rest of the data they keep is kept for their own internal purposes. Sometimes very difficult to produce it to the public or simply don't end up in success.

MELANIE PUSTAY >> This is Melanie Pustay from DOJ. I want to -- in response really to Jason's comment. I think it is important to remember DHS as example used that from the footnote you read, they process hundreds of thousands of FOIA requests every year. So it is not like they are just sitting around not doing anything under FOIA and it is -- they are processing hundreds of thousands of requests and the basic premise under FOIA is we do them first-in, first-out, so any time somebody says well did you do this, did you do that, are you -- it sounds like you're implying there should be a way to jump, jump the line if you make noise or -- obviously if

you file a lawsuit and unexpected consequence of that, I think a negative consequence it can make you go to the front of the line but, of course, that's not fair to all the hundreds of thousands of people at DHS waiting for records. So we have to be careful when we just talk about you had a long delay. It is unfortunate. Obviously it is the biggest problem in FOIA and we all recognize and that's why we have the committee, but it is not a question of is there something you can do to jump in front of everyone else because that's not right either.

ALINA M. SEMO >> Before I get to you, I want to get to the folks on the phone an opportunity to chime in. Don't want you to think that I forgot you. Ginger, James, Michael or Suzanne. Any questions or comments?

MICHAEL MORISY >> This is Michael Morisy. Sorry, after you James.

JAMES JACOBS >> Go ahead, Michael.

MICHAEL MORISY >> This was super, super helpful research and echoed a lot of what we have seen but didn't have the numbers to kind of back up. One of the things I have kind of noticed there have been times I think the FDA I think they had another announcement just within the past few months where they have started proactively releasing more material requested by requesters. This wasn't first-party requests but frequently commercially requested information now instead of requesting people can go to portal and download proactively. I'm curious if some of these sort of alternative resolution mechanisms, do you think that it could be a successful path or think there will be challenges if there was inducement for agencies to set up sort of alternative path beyond FOIA and say hey, first go through the path and see if it gets you what you want, maybe it is quicker and hopefully automated on the agency side while not reducing the requester's right if they are dissatisfied with the response than to file a formal FOIA request. I guess instead of sort of saying this is no longer part of FOIA, this is part of alternative mechanism you obtain the FOIA rights still. Is that something you think about in terms of balance of letting people not give up rights and encouraging people use alternative mechanism and is there any sort of ideas you have to make that successful?

MARGARET B. KWOKA >>> Great question because it goes to heart of anxiety I have about how we might change things is that I don't think it is the right way to go to limit anyone's ability to file a FOIA request if that's the route they prefer. I do think we can make routes that are so much better that nobody will prefer it in those particular situations. So I don't actually think we should ever be in the situation of recommending that we first have to go -- jump through certain hoops and then you can file a FOIA request. But when I talked to people who are doing this kind of first-person requesting, so mostly lawyers who have, you know, volumes of clients they are requesting their own clients' records, on behalf of personal requester. They don't prefer FOIA, they don't have another option. So I do think that if there was another option -- now would there be an adjustment time do we get the same thing, not get the same thing, should I try to do both and be sure? Yes. I think it will be time to trust alternative association to get everything they are getting under FOIA but I don't think people want a separate process if they don't need one. I think they want clarity -- thinking of Social Security right now where there's a separate way to request SS-5 documents. It doesn't seem like there's any reason for anyone to like write a letter and send it to like FOIA@SSA.gov. There's easy way to pay a flat fee of what it is and it is very

clear. I think in my mind it does raise anxiety to me in we might reform way in precludes people from filing FOIA request because it makes them go through certain hoops or another way. I think we can do this in a way that nobody will want to when there's a better alternative. I hope that answered your question.

ALINA M. SEMO >> Anyone else on the phone who had a question for Margaret? Okay.

JAMES JACOBS >> This is James but I had a question but it was similar to Michael and thank you for the research. It was fascinating.

MARGARET KWOKA >> Thanks.

PATRICIA WETH >> Patricia, National Labor Relations Board. Very nice to meet you in person because your FOIA request came into my agency and I can now give you a personal apology because it took us a really long time and your name was on my, you know, top 10 oldest, so it killed me. It killed me that it took us so long to get to it but it kind of goes along with what Jason was asking. There was just some technology issues and staffing and we did the best that we could. So anyway, it is nice to just tell you that in person. I'm sorry.

MARGARET KWOKA >> I have your data now.

PATRICIA WETH >> Yeah.

MARGARET KWOKA >> I will say -- I mentioned when I said that there are real barriers because the information is not kept uniformly. I think this is an area where I think it was fantastic that this body was able to adopt recommendation for the recommendation for this type of data and one thing it would be very easy and appropriate way for Congress to also legislate a reporting requirement that would ensure uniformity. Because right now there's no way to coordinate across agencies how we are keeping the information.

PATRICIA WETH >> Right.

MARGARET KWOKA >> I will also be happy to provide a set of slide for labels so you can distribute it. Sorry for whatever technological glitch caused that. I apologize.

RYAN LAW >> Margaret, Ryan from Treasury. Thank you for the shout-out at I.R.S. I have to say -- I.R.S. instituted a process several years ago to encourage access to tax records directly from the I.R.S. outside the FOIA process. I think it is a good -- it has been good and for my observation it has been a challenging to implement but has resulted in number of FOIA requests for tax records. Okay? One thing I would suggest and encourage you to look at, you focused in your research on who's submitting requests. I think it is important also to look at who's processing those requests as well. With I.R.S. FOIA requests are processed at the field office that the tax records are located in that have access in front of them. My experience at DHS files are kept in one location, processed primarily by FOIA staff at the agencies. So it would be helpful to understand where agency's records are being processed and who's doing that work. Then similarly any change you make for the process if we are going outside the FOIA process, you

know, we have to ensure that people have additional reasons -- you made the point earlier about immigration attorneys adding to their workload. I think that's a big concern. Lastly on legislative front, I was glad to hear you say there's a role for Congress here in Privacy Act does not afford access right to noncitizens. Their only right of access is through the FOIA. So I think -- I know that DHS through policy had extended access rights to noncitizens. I don't believe it is -- looking at colleague at DHS. I don't think that's the policy currently and that's an area right for Congress to look at.

MARGARET KWOKA >> Thanks. Those are very helpful comments.

ALINA M. SEMO >> Anyone else before we let Margaret go?

THOMAS SUSMAN >> Before you go, you and I have had this exchange a few times but in the introduction you always talk about the origin of the FOIA intended for use by media and you measure present value productivity by media use. But your first article, of course, slammed business users. I think you have a good --

>> Slammed a little hard.

THOMAS SUSMAN >> I think you have a good point in terms of fees but my history is issue of secret law and protecting business with information request was large part of the original history. So it was certainly contemplated by Congress there would be businesses benefit from and use the Freedom of Information Act and you missed that completely in the first article.

MARGARET KWOKA >> I think -- first off, I agree that the legislative history has references to business use of FOIA to discover kind of policy, government actions, government enforcement. I do believe in my first article I acknowledge some businesses may be using it in the oversight way, but my research shows that businesses are largely using it not for oversight purposes, not to discover what government is doing but discover what each other are doing. And so I think that absolutely businesses could be using it in its intended way and once in a while they do but mostly they are not. Now on the other hand I think there's lots of good reasons to allow -- promote to have businesses and access to records, may improve competition, may improve the marketplace, may even -- you know, there are some government oversight purposes, may allow them to participate in rulemaking, commenting, whatever else may be happening at the agency, but largely those businesses are closely holding that information for their own private benefit and not for a public oversight benefit. So in my first article what I tried to expose which you and I still may differ on and I'm okay with that, I believe again this is sort of mismatched issue. Businesses are largely using it for reasons not imagined and in fact, largely may not be -- may not be the best way of getting information to them. I think affirmative disclosure played outside role because businesses don't have personally identifiable information that might invoke privacy concerns so there's a lot of opportunities. I think in the commercial arena for agencies to promote information delivery in other ways. That is not to say that I think there -- I don't think that -- certainly not against business use of FOIA in any way but I don't think it is working very well as information delivery mechanism. It was meant to be idiosyncratic thing. Hear about something, there's a story out there, scandal, something you're curious about, news trying to uncover what's going on, what is the agency doing and writing letter these are the records I want makes perfect

sense. When writing letter everyday saying give me another of the same form I got yesterday but in different enforcement incident or whatever it is, doesn't make sense. So I agree absolutely it can be used in way used by Congress and it is just not what we are seeing as volume. Once in a while, sure, volume not given by that.

THOMAS SUSMAN >> This is Tom Susman, not to prolong but the first decade or decade and a half when agencies lost all the cases relating to enforcement manuals, advisory opinions, guidance documents, secret law, FOIA that's how business is mostly use FOIA and all of that is now proactively disclosed so they don't need to use it anymore and agree with you entirely on competitive issues. So I think it served a purpose in a lot of litigation where courts had to order Justice Department, IRS, SEC, FTC to make its secret law public and now it is all public.

MARGARET KWOKA >> I think that perfect example of a success story in terms of being able to preclude the need to rely on FOIA things public has a strong interest in.

ALINA M. SEMO >> Great. Margaret, thank you so much for your presentation. We are really grateful.

[APPLAUSE]

ALINA M. SEMO >> If she sticks around during the break you can gather around and ask her other questions. We are at our 11:15 mark, a little past 11:15. We will take a 15-minute break. I want to remind everyone there are restrooms immediately outside the theater, also downstairs next to the Charters Cafe where you can also purchase food or drink but you may not bring it back to the McGowan Theater. Please come back promptly at 11:35. We stand adjourned until then.

[BREAK]

ALINA M. SEMO >> All right. I think we are going to get started again. I invite the committee members to return to their seats. That would be great. We are missing Ryan. Welcome back, everyone. Hopefully everyone had a good break. Thank you again to Margaret. That was fantastic. That was a great presentation. We want to a lot more time than we normally do for subcommittee reports. Folks have been very busy. Extremely grateful for that. Melanie popped out. I will talk slowly. We will hear from each of the three subcommittees today and this is Kirsten's order. No particular order. I think we try to shuffle it around. Vision first, then Records Management and then Time/Volume. The subcommittee co-chairs will update on the work the subcommittees have done in the interim. Melanie, I'm talking very slowly to give you a chance to come back. Where they are today and raise any and all issues and discuss and hear about and consider. So this is great opportunity for us to do that when all together. By the way, do we have folks back on the phone? Ginger checking in.

>> Yes, I'm here.

ALINA M. SEMO >> Great. James?

>> Yes, I'm here. I was on mute. Sorry.

ALINA M. SEMO >> Joan, are you here?

>> Yes, I'm here.

ALINA M. SEMO >> Michael? Michael Morisy. No Michael? Okay. Hopefully he will join us again. Suzanne, are you there?

>> I am.

ALINA M. SEMO >> Michael, please check in when you come back. Subcommittee report I will turn over to Chris Knox and Joan. You guys will decide who's speaking.

CHRIS KNOX >> Sure. Chris Knox for the record. I will kick it off and hand off to Joan. We met shortly after the last full committee meeting and committed to a biweekly cadence for the subcommittee and we made majority of those but weren't able to make the last one or two of them due to vacation schedules. We decided to press forward after finalize the mission prior to the last -- last committee meeting we decided to make into subcomponents and assign individual leader for the subcomponents and one of them got rolled into another one and got four subcomponents and list them and announce the leader and subsection. First one FOIA in the executive branch led by Joan. Model of OGIS within the FOIA community led by Patricia. The third one which rolled into Joan's is increasing accountability for FOIA and transparency that ended up get combined with raising the priority. So the now third one is managing expectations between agencies and the requester community that's led by Kevin and then stressing the need for increased and continued financial support for agency and FOIA programs that's led by Michael. So I will turn it over to Joan to give update on the priority subsection.

JOAN KAMINER >> Thanks, Chris. Everybody let me know if you can't hear me. So the first subgroup with the priority and increasing accountability and few meetings and working to establish a set schedule going forward. We had a very successful last meeting in which we discussed and set certain levels that we see the priorities falling out particularly in public level, congressional branch agency and staff. At this meeting we also discussed our information gathering approaches in the decision. In the end we would be with other subcommittees written surveys as well as potential interviews at the ASAP [American Society of Access Professionals] conference. The participants met with ASAP and unable to participate on the call and the results of that conversation. Particularly for our group we would utilize written questionnaires as well as potential in person interviews to target these different -- certain level that we have established and, you know, collect information hoping to ensure that we don't have any duplicative with the other committee. We had other subject areas that we are looking for when we are gathering this information. This includes but not limited to FOIA report, training and qualifications, requester status, FOIA Public Liaison and records management. Then lastly we will continue in the upcoming meeting to develop specific questions so with that as I mentioned before we are going to take a close look at what has already been set by the other subcommittees and see what we can utilize from what other groups are gathering. That's it. If there's any questions, I can answer them.

ALINA M. SEMO >> Anyone?

JOAN KAMINER >> We will move on to reconsidering the model of OGIS. Patricia.

PATRICIA WETH >> To begin our project we needed to lay the foundation regarding our knowledge of OGIS, so we reviewed the OGIS annual report as well as celebrating OGIS' 10 year anniversary. We also had a meeting with OGIS. Then Tom Susman was kind enough to link us with Toby [McIntyre] director of the Law and Democracy Center who was just a fountain of information and he gave us guidance to some international models for us to look at. So currently what we are doing is we are looking at international FOIA ombudsman models. Also looking at state as well as Federal agency ombudsman models, so we are going to look at all three of those and, you know, compare our research. So that's where we are on that project.

JOAN KAMINER >> Thank you. Now managing expectations.

KEVIN GOLBERG >> Thanks. Yeah, we fell a little bit behind to the point where I feel like I have the dreams again where I'm back in school and exam is coming. This time I promise I will be wearing clothes. The good news is my committee is probably tapping into the ASAP process as well because we had talked about -- obviously managing expectations identifying what expectations are before you manage them. So we had kind of especially because I'm part of the Tim/Volume subcommittee that is, you know, sub subcommittee about that and doing some of the surveys realized that we could do -- utilize the same process. Not come up with the questions yet but good news is we absolutely have a deadline to do so, so I will reconvene my group within the next week to start writing the questions.

ALINA M. SEMO >> Thank you. Was Michael able to join on the phone?

>> Michael?

JOAN KAMINER >> This is Joan. I can give you update from the last time we had our full group since Michael hasn't had a chance to rejoin us.

ALINA M. SEMO >> That would be great. Thank you.

JOAN KAMINER >> I don't think he has. Just policy this is the update from the beginning of May but at that time this group was working at scheduling ongoing meetings and Michael was developing -- pulling together preexisting information and he was drafting a consolidated document to use to work off of. This group was also working closely with the Time/Volume on recommendations for increased resources, so that's another aspect of our subcommittee that's working closely in conjunction with the other groups. So maybe if comes back on later he might have additional update but that's the update from approximately a month ago.

ALINA M. SEMO >> Can I ask a clarification, brief the committee what we mean when we say go through ASAP because it sounds like such a shortcut and some folks don't know what that means. We talk about that.

JOAN KAMINER >> I wasn't able to join. Where you on that?

KEVIN GOLDBERG >> As soon as I can talk about that. What we are talking about is the ASAP training conference which is Kirsten from?

KIRSTEN MITCHELL >> July 22nd through 24th.

KEVIN GOLDBERG >> Right. So there were -- as you will hear more about in the Time/Volume Subcommittee -- maybe I will just kind of preview a lot of that anyway and not retread that ground when we get there. You know, we have done Time/Volume a series of questions threefold. Two were sort of the scalable question of to both agency officials and separately requesters which are, you know, on a scale of very much, not very important, very important or don't care or, you know, extensive problem, whatever. You know, kind of pick one answer and others are more open answered questions and try to figure out way to work with ASAP, especially on the agency officer side to reach a vehicle as many agency officers as possible at one time. We ran into a couple hiccups meeting and already heard subcommittees and met with Claire Shanley and others from ASAP to discuss this and became apparent we couldn't send this out for paperwork production or just through ASAP because there are other logistical problems there. Make it open-ended written type question, and at the Time/Volume Subcommittee I'm working on them to reduce number of questions and make them open-ended and kind of commit at being on-site at ASAP when it meets here in D.C. to have access to as many access professionals as we could in one place. It may -- it may not be an entirely scientific process but we are moving this more from a scientific quantifiable to more of a -- quantitative questioning to qualitative questioning to come out with I would hope some themes that we will then build into recommendations. But it is not the ASAP survey -- definitely want to be clear. Not the ASAP survey. It is using ASAP as a means of getting access to as many people as possible in one place and one time. Again, the timing of it could not be better because it forces us to have a deadline that soon will require action and coming out with good body of research with a lot of time to go forward and move on.

LIZZETTE KATILIUS >> Follow-up on what Joan said: Michael Morisy's component, we did meet with Patricia as well and we started talking about just preliminary issues surrounding the issues -- more financial support for FOIA programs and we are going to be scheduling the next meeting soon but we did -- we are able to touch base. There's a lot of overlap with the committee that I'm on, the Vision Subcommittee in terms of looking at, you know, managing volume of requests and within the time limits that we have. So I will speak about that one more when we get to that.

ALINA M. SEMO >> Any other questions from the committee for this subcommittee—Vision?

GINGER MCCALL >> This is Ginger. I have some questions.

ALINA M. SEMO >> Sure. Go ahead.

GINGER MCCALL >> Great. First I apologize for not being active the last two months. I have had personal things going on some of you may be aware of. I'm back now and have a couple

thoughts. First on the question of OGIS' role and what other offices are doing especially around the country, other FOIA ombuds offices and I would be happy to connect with people offline about that because starting own office in Oregon I have done a fair bit of research on it and contacts with folks that are at similar ombuds offices around the country, so if that would be helpful please feel free to reach out to me. Second I had a few questions on the ASAP survey. First the presence at ASAP conference, what will that look like? Is it going to be like a table at the conference or panel? What were the plans for that?

KEVIN GOLDBERG >> Ginger, this is Kevin Goldberg. Thank you for offering the research. I was just talking to Patricia about that. I'm on her sub subcommittee as I was calling them and we were just talking about that and sounds like it would be helpful to what we were trying to do to cut through to the core. With regard to ASAP. It is not a panel. I would say it is -- not a panel. It is easy shortcut to call ASAP survey. I would say survey utilizing ASAP so we are clear about it which I think means -- I think what has been gracious to offer a table at the event where we can sort of be there and hey we really need help and could help improve the jobs and stop by and talk to us. I think one thing I will preview may want to talk about you have all done a really good job I think within individual groups in the survey cutting the questions down to a minimum. I will talk again about Time/Volume or maybe completely say Sarah has been writing the requester side and don't know if they are going to run through the ASAP event and may not be enough people there and requester community through the sites. I have been doing agency questions and almost eight or nine each and certainly about 25 questions. Cut it down less than 10 and have too many different individual surveys going, subcommittees, going back to untenable portion so we obviously have to manage that across all the three subcommittees or subcommittees using ASAP but it is definitely tabled.

GINGER MCCALL >> That is great. If you need somebody to sit at the table for some sort of time I will be at the conference for the full conference. It may be useful to remind people to fill the survey. I will make sure I do it on the panels that I'm on but maybe Kirsten could help coordinate that and maximize the amount of participation.

KIRSTEN MTICHELL >> I'm happy to do that.

KEVIN GOLDBERG >> I carved out my schedule and blacked out my calendar as long as I can sit there those days to plunk myself down as well.

GINGER MCCALL >> Let me know if you would like company because I would love to do it.

ALINA M. SEMO >> Ginger, anything else?

GINGER MCCALL >> No, that's it for now. Thank you.

ALINA M. SEMO >> Anyone else have any questions for the Vision Subcommittee? Going once, do you have any? Records management we have a robust presentation that Ryan is going to kick us off with.

RYAN LAW >> Ryan from Treasury. Thank you for the opportunity to provide the committee with an update on our work on the Records Subcommittee. First wanted to let everyone know that Records Subcommittee has met formally twice since the last full committee meeting and work continues in this area and we are scheduled to meet on Thursday of next week. As I mentioned during the last full -- as Jason mentioned during the last full committee meeting we met with the Federal Records Officers Network [FRON], group of Federal employees that are records officers, diverse group of folks, different grade levels, different agencies some at bureau level or like lower agency level and some at headquarters level. They meet regularly to discuss records management issues. So we approached them and met with them on April 9th and provided them update on work on the FOIA Advisory Committee what the goals were and what we all are working toward. Specifically we wanted to start a conversation with that group about records management in FOIA and to get their feedback about how records management and FOIA could work better together to improve both the administration of the FOIA and then also the public's ability to identify and access information and records. We asked a number of questions and quickly run out of time. Sent out questions to the member base and we hoped to get the results of those questions soon. We are actually -- Jason and I are returning to the FRON meeting next Tuesday to discuss with them those questions again to get the feedback and look forward to providing additional update on what we learned there. So some of the survey -- some of the questions we asked kind of expanded on the records management self-assessment that NARA and that I believe OGIS participated in in developing this year we asked questions like what agencies can do -- in what ways can agencies do a better job to make it easier for FOIA requesters to understand where records are located where they might exist in the agency. We ask questions around -- we are asking records management folks do they believe the FOIA officers are aware how e-mail was preserved at the agency. We asked a question which we will talk about in a second was asked in the Chief [FOIA] Officer report what improvements can or should be made to the agency search capabilities with regard to records. Also we asked about whether those records management folks felt that they -- that NARA had a role or do they have a role in educating FOIA professionals about records resources within the agency. So we have asked a number of questions. We are really interested to see the response. I believe we got feedback from the FRON leadership that we have a few responses and hopefully get more before their -- before the meeting next Tuesday. So we look forward to updating the committee on the work there as well. We also -- Jason and I wanted to talk third about the results of several surveys that we conducted of agency Chief FOIA Officer reports. You may know the previous FOIA Advisory Committee made a recommendation that OIP had a question to the Chief Officer Report and the question was is agency leveraging technology to facilitate for searches including searches for e-mails? If so please describe the technology used and if not describe the typical process used instead. So we have taken I believe a nonscientific kind of approach and just grabbed a bunch of answers to the chief officer report to the question and Jason was going to talk about the observation there.

JASON R. BARON >> Thanks, Ryan. So I think it is excellent that Melanie, that DOJ took up the recommendation of the prior FOIA Advisory Committee and added this question in section four of the Chief FOIA Officer Report. I spent a happy Saturday reading all the reports. Not all of them are in yet of the 2019 but a lot are and make for fascinating reading.

>> So happy.

JASON R. BARON >> The survey that is one of the handouts here on the line is simply my attempt to cut and paste the answers to basically every cabinet agency and most, not all, of the -- at least of the larger independent agencies and other agencies not cabinet departments. So it is not 100%. It is what it is. It is just cut and paste. I encourage everyone this committee to take a look at the entries and see what you think. I don't want you prejudice anyone's own evaluation but let me make the following observation which is that I applaud the efforts of agencies to report that they are using eDiscovery somewhere to perform searches of electronic records at their agencies. You can see numerous examples in these reports where agencies made steps, initial steps toward using software I believe the community heard and I certainly have been advocate of. What is obvious to me in looking at the reports is government has a long way to go with respect to what is the coming wave of digital records? We have several hundred agencies or components of the government that much adapted the NARA Capstone policy on e-mail. There will be tens if not hundreds of millions of e-mails across the government that are in Capstone repositories. What the eDiscovery community that I have been a part of last decade advocating using advance search technologies that go beyond keyword searching to deal with enormous volume in the discovery world are routinely searched. So missing and hope to have a conversation whether this committee can be a forum, whether from management's or otherwise to have a dialogue with agencies how they can go further along the path that would be more mature in their use of existing tools and technologies that are in the marketplace and may not experience the need yet for searching across millions of e-mails for the typical FOIA request that usually receives and future is coming and because repositories are growing there's a role for us to play in giving advice and try to foster it so I would urge people to take a look at this. It is not a survey, it is a summary of what those responses were and if you have thoughts, let us know. Should I go on to training?

ALINA M. SEMO >> May I ask one thing, Jason. For everyone that's on the committee, does everyone know what Capstone is?

JASON R. BARON >> I'm happy to say NARA adopted new e-mail policy which is a voluntary for agencies to adopt but agencies have and what it accounts for is different way of record retention about e-mail. It is e-mail singling out where senior agency officials have e-mails as permanent in Capstone agency and Capstone accounts are permanent records and everyone else e-mail at agency is governed by General Records Schedule 6.1 which accounts for -- says seven years as default for program records. So it is a way of capturing a huge body of government records in the form of e-mail and attachments and I think our committee has several recommendations that relate to the fact that government is very much still in the e-mail business and needs to provide access to what our growing repositories of the records.

ALINA M. SEMO >> Are there any questions about our work here in this area?

ALINA M. SEMO >> Anyone on the phone have any questions?

RYAN LAW >> So this is Ryan again. I wanted to -- also conducted a survey of agency training resources for records management and FOIA staff and that's also in your handouts today and Jason was going to talk about observations there.

JASON R. BARON >> The handout is here also from Chief [FOIA] Officer report and what I did is in this case on the front page, top page, is just my attempt at merging together and listing and kind of FOIA training that's out there and a lot with DOJ and some of it is by other groups that are out there. It is across the board there seems to be a tremendous amount of training going on across agencies and particularly wanted to single out examples and put them -- two examples and one was Labor reporting -- Department of Labor reporting that as part of FOIA training they had an individual counsel who has a title that includes the Federal Records Act which was something that I was looking for specifically for this records management committee to see whether FOIA and records management are being talked about. And then I also wanted to applaud DHS for what I considered across the board to be the most fulsome comprehensive set of training courses are reported anywhere across any of the government. Bradley I think you should deserve some credit here for the work that DHS has done in training. Having said that, those that know me those know I save the best for last. My criticism of the report -- what is animating a recommendation from the Records Management Subcommittee is there's a tremendous amount of training but I think FOIA officers would benefit from a course that is created. This is my own view, not the subcommittee's view but it is part of our talking -- talking through recommendations. A course that would be aimed at FOIA professionals throughout the government that DOJ and OGIS can talk about and whoever takes the lead but in the course it would be FOIA professionals learning about records management to do a better job of search -- doing adequate search across agency collections including digital collections, including Capstone. So I think it would be particularly a benefit for FOIA officers to understand Capstone but there's a broader realm of issues here and what I saw was records management module in FOIA. May actually there be but I didn't see it listed and we can have that conversation going forth. So be one of our recommendations to do more robust training in whatever form the DOJ can do.

ALINA M. SEMO >> Before we move on to the last point, are there any questions on training? Okay.

GINGER MCCALL >> This is Ginger. I have a quick question.

JASON R. BARON >> Yes.

GINGER MCCALL>> I know it is outside groups training but did you look at offerings from ASAP and its National Training Conference. I think they cover retention issues. Kirsten would be well-versed in that.

JASON R. BARON >> ASAP is listed here but I defer to Kirsten on what that entails.

KIRSTEN MITCHELL >> There are records management tracks, if you will, offered every year at the National Training Conference. So it does happen. I can't tell you what will be offered this year.

MELANIE PUSTAY>> Does NARA as the records management agency itself offer training?

>> Of course, it does.

JASON R. BARON >> The issue for me and focus here was are they -- are they themselves offering any kind of course or module within a course that is focused on the FOIA community learning about records management. We had conversations with representative from the Chief Records Officer and Laurence Brewer's office and my understanding is there isn't such a module that has been developed by NARA. I myself taught lawyers for any number of years in a specific narrow records management course for lawyers. Case for agency counsel and it was I think a well-received vehicle. I understand the changes to the general NARA program of training that have been announced but nevertheless, we are previewing here a recommendation from the committee that more robust training for the FOIA community on records management is something that we are -- we would recommend.

RYAN LAW >> This is Ryan again. Are there any other questions on the phone? Lastly we wanted to provide a little preview of some of the kind of draft recommendations that we have been discussing and these are still being deliberated and we welcome the full committee's input on these. We will discuss them verbally today. Jason, I didn't discuss how we are going to divide these up. We have eight separate kind of draft recommendations currently. I will grab the first one, Jason, to start. So we are looking at -- again, we are looking at records management, how it can improve administration to FOIA. One record that we looked at is 552(g) that requires agencies to make available certain information to assist requesters in filing for request, like FOIA guide or instruction manual for that. It requires agencies post list of systems and information systems and that sort of thing. So as part of our review we looked at agency websites and done nonscientific survey of the cabinet level and midsize agencies and to get a sense of how agencies are complying with this element. I will note that DOJ issued guidance at the end of 2017 on updating agency websites that has some additional guidance here. Some agencies do it very well, some agencies room for improvement and looking for subcommittee at this more closely and kind of the draft recommendation right now is agencies should publish enhanced documentation of internal records management policy as part of fulfilling section (g) of the FOIA. May include providing or providing access to or links to agency record schedules, so requesters can identify what records the agency maintains. Records file plans. Records management guidance given to agency staff, information about agency records systems. So, for example, some agencies post list of Privacy Act system of records and some instances we couldn't find the Non-Privacy Act system equivalent and what records and what systems do agencies keep outside Privacy Act records systems and then also information about their management of e-mail by Capstone. This is just one area we are looking at potentially to recommend that DOJ supplement guidance or potentially alleged fix as well. Want to take two?

JASON R. BARON >> We covered two which is that we will -- we are talking about recommendation involving training and we covered that.

ALINA M. SEMO >> I'm sorry to interrupt you. This is Alina. Can we go back to one for a second? I want to say for my part I have not read 552(g) in a while so it was intriguing to hear the recommendation and thought process and make sure everyone was aware of exactly what (g) said. Do you have it on your iPad?

JASON R. BARON >> I don't have connection.

ALINA M. SEMO >> I found sort of obscure part that we normally don't lead. In terms of legislative fix what were you thinking about?

RYAN LAW >> This is Ryan. So I took a look into legislative history and tried to find when this language was added. I believe it was added very early on in FOIA and I don't believe it has been updated. It wasn't -- language I don't believe changed in recent amendments so I think you know the time would be good to look at this and to potentially add it -- add additional language and clarity what expectations are for agencies. I think similarly now that we have a government wide effort -- government wide FOIA portal and also the idea act which passed recently which has agencies to standardize websites. We have an opportunity to potentially make some changes in this area so the standard is set across the government for what is provided to requesters to enable them to make requests to the government.

JASON R. BARON >> It is the existing provision that FOIA handbooks and indexes and other documentation made available to do the public, I think that the law -- it could be made more robust with some further best practices here.

MELANIE PUSTAY >> I'm Melanie Pustay. I don't -- don't want to get -- let me add a suggestion when looking into this. When we were doing research for the national FOIA portal, one of the things we found universal way people look for information is Google model. They just type in a topic and they don't -- because we all live in a world where that's what you do when you wanted to look something up, we want -- makes me think that we need to be careful that provision about major information system, how useful will it be? As part of the FOIA Reference Guide and I think practically the requester community doesn't necessarily want to go and look and figure out what record system and what is a record system and I just want records on X. Wherever you have an agency it is not my job to figure out what system it is in. So my only suggestion to the subcommittee is to sort of factor in the user experience in terms of usability and usefulness of the information.

JASON R. BARON >> Thank you.

MELANIE PUSTAY >> Sure.

JASON R. BARON >> Ryan, my thought after couple more iterations in the subcommittee we will be able to report out for the next hearing, next public meeting and then we should have a conversation going forward, so we are just previewing it here. How many more minutes do I have, Alina?

ALINA M. SEMO >> So many more minutes. You're okay.

JASON R. BARON >> I'm not going to take too long. I'm going to as a teaser say here are other recommendations we are talking about. One is to have NARA and OGIS, DOJ, issue best practice guidance what constitutes adequate search for e-mail including Capstone. Fourth recommendation is NARA, OGIS and DOJ produce guidance with recordkeeping access for records in form of electronic messaging within commercial networks and 4040 U.S.C. 2911. These are both traditional e-mail services on commercial networks like Gmail but range of more

ephemeral messaging acts with some of them built-in capability of self-destruction. Next recommendation is for tighter interrogation of FOIA access issues into various records management initiatives at NARA and otherwise. We could see expanding the annual agency self-certification survey to include additional questions to agencies about electronic record repositories and I won't beat the drum about Capstone but we have a bunch of subparts on that. We want to have a continuing conversation with NARA about FERMI, Federal Electronic Records Modernization Initiative, going forward with and talk about A-130 and access in some further way. The next recommendation comes from a conversation and our advice to the Inspector General community that the we had earlier as part of the round in this Committee and that we are discussing whether the Archivist should make a request to CIGIE, the Council of the Inspectors General in Integrity and Efficiency, to consider prioritizing or make the examination of access to Federal records a cross-cutting project or priority area for agency inspectors general and a lot of conversation at the prior meeting about whether individual IG offices there could be some point of contact established for FOIA and for records management within so we want to develop thinking on that. Two more to go. These two I wish to expressly say that we want to work with the Vision Subcommittee on and -- so that we are dove tailing and not overlapping and being redundant. One is a recommendation that goes to the newly enacted foundations of evidence based policy making act which incorporates the Open Government Data Act creating CDO or chief data officer. In open government data world I think we would like to have a conversation about marrying up FOIA and open data in a way that would be useful and to make sure that CDO's throughout the government are aware of their existing laws and regulations on FOIA and records management. That's something I think we want to talk about with the Vision Subcommittee. Second and last in our recommendations sort of a joint thing to talk about further, is that we are talking about whether the Archivist should take the lead or be the government initiative in promoting research in using artificial intelligence technology and search through electronic record repository and desegregate sensitive material in government records, including but not limited to material otherwise within the scope of the nine FOIA exemptions. I must say that this is -- my own particular soap box that I believe that we are entering a world of dark digital data that government records that are not accessible because of PII and other sensitivities but I think it is within the mandate of the committee to think about how to improve both records management and FOIA by using AI technology. This initiative could include using research components of NARA, of GSA, [unintelligible] networking information technology research program, CDO council, chief privacy officers with DOJ, with any interested components of government who want to be sort of thinking about state-of-the-art initiatives on AI. Executive order and lots of interest in AI and why not have an intersection here with this committee and have a recommendation about AI FOIA. Those are what we are thinking about and we will put these down in writing and send them around and if there's time in some other -- either on September 6th or at some future time to have a full conversation with all committee members in advance of actually drafting a subcommittee report we will be happy to have the dialogue.

>> You mentioned coordinating with the Vision Subcommittee. I think that's best under priority and transparency sub-sub section next led by Joan so might make sense to join that group to coordinate.

>> We can find someone.

JOAN KAMINER >> This is Joan Kaminer. I will invite you to our next meeting. Thank you for that.

>> Joan, can you repeat that, please.

JOAN KAMINER >> Sorry. Can you hear me?

>> Now we can.

JOAN KAMINER >> So I will be sure to include the members of your subcommittee on our next group call.

JASON R. BARON >> Whoever that's going to be from the records management subcommittee.

JOAN KAMINER >> I will make sure you have the information and you can decide who can participate.

ALINA M. SEMO >> Any other members of the Records Management Subcommittee want to comment? Over here, this distinguished corner. Emily is not here today, so Bradley, Time/Volume falls on your shoulders.

BRADLEY WHITE >> I want to apologize about my voice. I will ask action team instead of sub sub committees and action leaders to the step in. We originally started off with seven action items and after discussion we wound up combining the last four which related to identifying people in community and in government community that we would survey which is what Kevin will talk about later. First action item related to tracking progress of past recommendations which we had really good presentation I believe at the last committee meeting about that.

ALINA M. SEMO >> We will again today.

BRADLEY WHITE >> Exactly. So I will move on. Second action items regarded -- related to analyzing complex requests and happy to receive help from Carrie [Tallichet Smith] with OGIS to help on that and we received her information a while ago and I have to say I was actually surprised with the data and I think that comes from just being stuck within my DHS bubble where we have seen our complex requests increase steady over time, so I thought that would something that would go on -- excuse me -- that would go across the government but it actually looks like less than half of Federal agencies have seen increase in complex requests but what really interested me is the request -- number of agency see complex requests go down by 56%. Ones that have seen the complex requests go and up DHS definitely that number that increase has gone up by 251%. I don't know if there's anything we can extrapolate to the greater government and haven't gone into the data but I found that really, really interesting. Then our third group was on international research looking at international models related to the management of high volume time crunch with FOIA, happy to welcome James [Stocker] to the group so thank you for joining us. We appreciate your expertise. After that I will turn over to Kevin to talk about our survey stuff.

KEVIN GOLDBERG >> Good news is that I've basically given you the report. We have narrowed down the questions for the Time/Volume portion that will be sent to requesters and agency officers and at least with the agency side, the agency officers' side, trying to pin down as many responses.

ALINA M. SEMO >> This is Alina. Don't want to put you on the spot but would you be able to preview any of the questions?

KEVIN GOLDBERG >> If you let me boot up my computer I would. Sarah wrote it so putting two people on the spot.

SARAH KOTLER >> This is Sarah. I primarily designed the question with input, of course, that would be asked of requesters because I want to know what are the requesters asking and Kevin on the side of what in the world are the agencies thinking, so I really started with what I generally want to know. Some of the questions are definitely geared to what level of research does a requester do before he or she makes a FOIA request and broken down into variety of questions and make fewer questions and more open, so might say something along the lines of what if any research might do you before you make a FOIA request, things that might come to mind, check the agency website, see what logs are posted and what other request on the subject have been handled because if I were making a FOIA request that's what I would do and a lot of inside knowledge that many FOIA requesters don't have. So sort of what are you doing before you make a FOIA request, what kinds of things do you do when you have a pending FOIA request? Do you call and check on status, do you appeal if you don't get an answer, constructive denial? What would drive you to have a lawsuit involving your FOIA. Sort of went through that before, during, after what you would do.

KEVIN GOLDBERG >> I would pull up questions and won't go through them all but deal with pressure point or frustration points. May be a little venting opportunity for some people here but what is an impediment, agency control the processing for request and then we have what are common areas of confusion and couple things in that vein, couple things regarding the tracking somewhere, whether people think the tracking and review somewhere works. One about interaction with OGIS and how it is working for them. Of course, some of these bring up idea will they be blind answers? I think we want to gain as much information, some responding if possible and at least the size of the agency and volume of request. If I learn one thing and already knew it anyway through the last nine months of this is not every agency is the same, right? You know, how tracking somewhere working and interactions working and what kind of guidance do you feel you're getting enough guidance from other areas of government internally and final question which we had written up and I cannot help but ask it is if you had a magic wand to fix for you, what would you do? Can't wait to see some of those.

ALINA M. SEMO >> Great. Thank you.

JAMES STOCKER >> This is James. Are you giving the option to identify themselves?

KEVIN GOLDBERG >> By name. There could be different levels of that. I understand it is not scientific to do this but I think there will be -- there's a need for people to not identify

themselves, maybe not identify their agency, but we really would love for people to give us as much information as possible. At minimum I think we need to be able to know obviously and we probably will because we will be wearing name tags, I assume but we need to know and identify in conjunction with response especially for purposes of reporting or maybe when we quote people if we want to do that directly, it is a high-volume agency, something along the lines will be necessary but trying to offer flexibility.

JAMES STOCKER >> As a follow-up question will you -- I don't know if you need to ask them to sign release or anything like that and may be getting formal letter but coming in academia -- usually have to run it by ethics committee and don't mean to lay impediments out of the way.

KIRSTEN MITCHELL >> This is Kirsten. That's an excellent question and Claire, the director of ASAP, is I'm sure already on it. But if not I will ask her to be on it.

MELANIE PUSTAY >> This is Melanie. I think to sort of piggyback on that I think it will be important people to understand it is a volunteer thing and purpose for which the questions are being asked.

KEVIN GOLDBERG >> That's good to know. I don't know if we want to go full actual waiver release to sign but certainly volunteer nature of course will be sitting in vendor row at the conference and nobody is forcing them, I will be asking, asking for [unintelligible] spend time on FOIA, we would really love your help. Somebody said maybe we need to bribe somebody with candy. I can't believe I used the word bribe with Federal office. It is not a bribe. We will entice them.

ABIOYE MOSHEIM >> This is Abioye Mosheim and I want to report on what international model is doing and welcome James and Ginger welcome back and since the last meeting. Patricia and I met with -- over the phone anyway with very own Tom Susman and also met with Toby Mendel to try to focus on some countries to do research on to compare the law with and what we could learn from the countries. We came up with a list. Not sure we settled on this list but what have so far. India, Chile, Afghanistan, Sri Lanka and a subcommittee call I think last week looking although how to approach researching the laws and James came up with an idea, came up with list of questions when coming up with the laws and he is working on -- laws and we will meet again to divvy up the work to dig in and get started.

JAMES STOCKER >> This is James. I wanted to ask any questions that other subcommittees or other sub subcommittees looking at that might benefit from international perspective and reach out and what kind of information you're interested in and in the process of doing research we can try to address that question as well. The list could get really big and we have a lot of cases in mind, at least at the moment, so we may be a little bit limited how much we can do but certainly love to know if anyone has benefit from that.

ALINA M. SEMO >> Thanks for the offer. That's great. I any other questions for Time/Volume Subcommittee? Anyone on the phone? Lizzette.

LIZZETTE KATILIUS >> I will speak a little bit about what we are doing. I will talk about the action committee and Time/Volume Subcommittee looking at complex requests that Bradley spoke of or mentioned earlier. So I am working with Patricia Weth on this and goal here is to see if we can come up with recommendations based upon what we have seen with agencies that have a high volume of complex requests. So our road map for that has been to collect a lot of data thanks to a research fellow at the presidential library that Alina and Kirsten recommended to us that gave us basically a survey or canvassed all the annual reports and looked at numbers over five-year period. That's a lot of data. So what we decided to do is cross-reference that with the summary of two FOIA officer reports. We like the greens and reds. It helps to kind of focus where -- you know, where success stories are and where there's room for improvement. So doing that it will help us we are thinking identify -- don't want to get too in the weeds with the number of agencies we are looking at since we are, you know, a year away from when we need to produce our product but maybe top three or top five of success stories both, you know, in managing their complex requests and maybe where there was room for improvement. With that trying to talk to agencies, whether we used the questions that others have developed, maybe we use ASAP as vehicle or some other format to speak with the agencies to see if we can derive some best practices or lessons learned and then taking what we learned from that discussion and formulate something kind of recommendations for this group obviously but other agencies.

ALINA M. SEMO >> Great. Thank you. Any other sub subcommittee, Time/Volume Subcommittee want to report? This is actually very helpful. This is how work gets done. Tom? I thought you were raising your hand. Okay. I want to keep on schedule. So we are two minutes out actually from being off schedule. Are you proud of me, Kirsten? I want to invite Martha Murphy up. Is Martha still here? I thought she ran away. I saw her run up the stairs. She will give us a report, update, on the committee recommendations from Advisory Committees and we will take any questions.

MARTHA MURPHY >> I will try to be quick. As you know the first recommendation we are calling complete the CFO subcommittee has been established and they are using the Chief FOIA Officer reports to assess the landscape, identify best practices and then they are going to make recommendations for agencies based on their IT capabilities. They recognize that some agencies are bigger, have bigger systems, some are smaller, so going to try to cater the recommendations to different types of agencies and we are currently helping to arrange for the subcommittee to present before the CIO Council in July.

ALINA M. SEMO >> Martha, I also just want to add, I invited them to come and brief our committee here a little bit later. They said they are not quite ready yet but I think it will be important to cross pollinate what they are doing and very active member base and two subcommittee chairs are very active and a lot of information they can share.

MARTHA MURPHY >> Second recommendation. Jason, I see you had some work going through but we had student look at all the reports and compile information. We need to just go through and start cleaning up a little bit and we will be forwarding it on and a little bit more comprehensive. We are on schedule. We should be getting this is the recommendation that will send business case on to the council and I spoke to her earlier this week and hoping to get the business case to the council, OMB, GSA the next couple weeks and we are on schedule. I'm

flying through, so if anybody has any questions, stop me. There's been no real change to recommendation number four or five. Still hoping to get that in the fourth quarter.

ALINA M. SEMO >> Of 2020.

MARTHA MURPHY >> Recommendation number six. Complete again. Number seven as well. Nothing changed with this one. Finally the last recommendation from the 2014 to 2016 term OGIS has proposed a red-lined version to change to regs and we are currently awaiting reply for action. We are leading the horse to water. That's all I got. Anyone have any questions?

ALINA M. SEMO >> You really flew through that. This is Alina recommendation number six and we included it in the annual report that we sent up to Congress and President and we made several suggestions of ways to start approaching this issue but I think as many as subcommittee and committee members know there's a thorny issue that has a lot of aspects to it that I think are quite difficult. This is Section 508 compliance and how it intersects with proactive disclosure responsibilities under FOIA and we have had the first advisory committee looked at the issue, second advisory committee looked at this issue. I don't think anyone of the subcommittees is looking at it right now, which is fine but I think it really needs some more careful study and really good understanding of what's actually going on at the agency level that I don't think we necessarily have. What the second Advisory Committee gathered was anecdotal evidence that they were able to incorporate and bring this recommendation about, but we certainly advanced in our report and we talked it up to folks on the Hill but I think it is -- there's a long way to go. We need help.

MARTHA MURPHY >> Thank you.

ALINA M. SEMO >> Okay. If there are no other questions from the committee, I know Melanie wanted to briefly update us on what's going on at OIP.

MELANIE PUSTAY>> Melanie Pustay. An update: we published literally this morning a summary of the annual FOIA reports for Fiscal Year '18, all the data, they are in, cleared, data uploaded to FOIA.gov and obviously a bigger challenge this year with the shutdown than with prior years. I want to give what all of us expected, number of incoming requests went up yet again and people could not get enough of FOIA. We are up to 863,000 requests which actually -- well, just tell you, compare -- we also agencies also overall increase the processing of requests so once again agencies keep upping their game and doing better each year. Agencies overall processed 830,000 requests and when you look at how many requests were received last fiscal year it was 818,000. So if the incoming had stayed the same, the processing of 818,000 would have surpassed the incoming and would have seen backlog reduction but just no matter how much the agencies process more, each year we seem to be in cycle where the incoming yet again trumps the processing. So it is really, you know, interesting trend that just keeps continuing. The exemptions that were most commonly used remain the same as they always have been, over 50% of the exemptions used are 6 and 7(C) for personal privacy. 7(E) was the third most used exemption. We also talked a little bit during the course of this discussion today about the difference in -- the difference in agency size and how -- proportionality of who gets the most requests. So once again, we had five agencies that got 70% of all FOIA requests. DHS with

almost 400,000 requests. Last year they were 395,000. Just staggering. DOJ was next. We were 96,000. So we are heading into 100,000. Six digits. DOD was afterward with -- next one with 57,000. NARA was 52,000. Then USDA was the fifth largest agency this year, new entrance into the top five, whether it is a good thing or bad thing. Then the one thing that was also a nice highlight was that agencies were able to reduce the amount of time that they took to process simple track requests. So that helped show that the focus on that are negotiating with requesters to get simple track requests is reaping rewards and agencies able to process those in faster amount of time. That was a nice statistic. The data all available as I said on FOIA.gov.

ALINA M. SEMO >> Any questions for Melanie? Anyone on the phone? Okay. So we are right on schedule. We are now at the point where we are happy to take any public comments. I would like to ask Sheela if there's anything on live stream that needs to be reported. She is shaking her head no. Everyone is glued to computer screens and just can't think of anything to say. Do we have from the audience here that would like to come up and over any comments to the committee? No? Okay. That was easy. So I think we are all very excited about all the work that's going on and I think it was great to hear from each other about what is going on. Our next meeting is Thursday, September 5th at 10:00 a.m. right here at McGowan Theater. I want to invite everyone to visit the OGIS website and social media. We are going to post all of this information up there from today's meeting and I'm just going to ask anyone on the committee if there are any other questions before we adjourn otherwise we will stand adjourned. Sorry. Kirsten is asking me to remind everyone to return the NARA folders as they are -- they have become quite a scarce resources and fairly expensive to reproduce as we have learned. We are using them. If there are no other questions or concerns -- Jason has a question or concern?

JASON R. BARON >> Just a question. Alina or Kirsten, do you have any ideas for speakers or people be invited to give presentations to us through the remaining time that we are together?

ALINA M. SEMO >> I did mention that I thought the technology subcommittee co-chairs -- I'm putting them on the spot but I would like them to come and brief us. Otherwise we have a pretty open plate. We certainly need to leave room for lots of work time at the last two meetings. So -- but if you have any suggestions, sounds like maybe you do, perhaps you could let us know.

JASON R. BARON >> I would -- I do think we need to leave more time and precluded by it then so be it. But I would be interested in hearing from some lawyer advocates from the public interest community of what they find as challenges in filing lawsuits against the government and we can talk offline about some of our favorite people who are out there who are experts at this and I would like to invite them to come.

ALINA M. SEMO >> Not going to put Lee on the spot but we have Lee on the committee.

LEE STEVEN >> More than happy.

ALINA M. SEMO >> To gather a little panel? We can gather a panel.

LEE STEVEN >> More than happy to participate.

ALINA M. SEMO >> Anyone else? Everyone, we stand adjourned. Thank you for your time.