

December 5, 2019

To: 2018-2020 FOIA Advisory Committee

From: Vision Subcommittee of the 2018-2020 FOIA Advisory Committee

Re: Proposals for Discussion Purposes Only

*The following 11 recommendations are for discussion purposes only at the public meeting scheduled for December 6, 2019.*

1. (In conjunction with Time/Volume Subcommittee) Recommend that agencies conduct a comprehensive review of their technological and staffing capabilities and requirements to ensure that they have the resources necessary to respond to changing FOIA needs. This should include planning to address future increases in the number of FOIA requests received, as well as high-volume e-discovery style document reviews. (Bradley (Time/Volume point); (Vision point)
2. (In conjunction with Records Subcommittee) More proactive data management – focus on impacting upstream. (Records point); Vision point)
3. 508 compliance
  - a. Bringing the Industry perspective to 508 compliance
  - b. Producing a flat PDF is necessary for production w/redactions – how can we “bake-in” remediation.
4. Streamlining process for certain types of records/records
  - a. Define record/request types (Immigration, EEO, Veterans, etc...).
  - b. Defining who actually owns the data in these requests.
    - i. Immigration example: ICE, CBP, CIS, EOIR.
5. Further defining/redefining search reasonableness (Standards for reasonably described requests?)
6. New Pending FOIA legislation:
  - a. <https://www.cardin.senate.gov/newsroom/press/release/cardin-introduces-legislation-to-hold-private-prisons-accountable> (Making Private Prisons subject to FOIA).
7. Release to one, Release to all:
  - a. This policy has been around for years now – pilot, public comment, draft policy circulated.
8. Agencies being required to pay for their own litigation losses
  - a. Unintended consequence is that it only compounds the problem: fewer financial resources for the agency, FOIA staff focus on litigation and reducing staff allocated to processing incoming requests which results in increased litigation for failure to respond.
9. Vexatious/voluminous requesters:
10. Establish briefing for senior leaders during transition to a new administration which provides a thorough understanding of FOIA obligations/expectations, agency FOIA process, FOIA resources etc.
  - a. OGIS could provide basic template with basic information on FOIA and resources, identifying topics to cover/information to include.
11. Recommend revising the statutory timeframe permitted for responding to complex FOIA requests. Base a revised timeframe on metrics provided by agencies on processing times for complex requests.
  - a. Alternative to above: establish metrics which support rate of review/processing for FOIA requests. For example: FBI and DHS have successfully defended a pages per month processing rate in numerous litigations. A workgroup could be established to pull metrics from various agencies and develop a metric which establishes a rate of review based on the number of staff dedicated to FOIA in that organization. Once a search is completed there is more transparency and support for an agency’s proposed completion date.