NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

November 29, 2018

Freedom of Information Act(FOIA) Advisory Committee Meeting

>> DAVID S. FERRIERO Good morning, I'm David Ferriero the Archivist of the United States. It's a pleasure to welcome you here today and welcome to the second meeting of the third term of the Freedom of Information Act Advisory Committee. Those of you who are here in the McGowan Theater and watching online on our YouTube channel might notice a different set-up today. The Advisory Committee members are actually seated in the front row to listen to an on‑stage panel discussion by special guests of the Inspector General community. The Committee members will move to their on‑stage seats after we hear from our guests. As many of you know, Records Management is at the heart of what we do here at the National Archives and proper records management is vital to the success of our mission to provide public access to our holdings. We at the National Archives have observed that proper Records Management also is essential to the Freedom of Information Act process that works for all.

This FOIA Advisory Committee at its inaugural meeting of its third term in September established three topics to explore over the next two years: time and volume, vision for the future of FOIA, and Records Management. The convergence of FOIA and Records Management will play a large role in today's meeting which is fitting as both are so deeply entwined in our mission. Today we'll see Records Management and FOIA through the lens of Inspectors General at four departments and agencies from a cabinet level department to the Intelligence Community to two small independent agencies. And

later this morning Laurence Brewer, the Chief Records Officer of the United States, will give an overview and update on Records Management issues.

I'm confident that these speakers will spark interest and creative thought not just among the seven members of the Records Management subcommittee but also among the entire Committee. I'm hopeful too that today's presentations will ignite some ideas that result in recommendations to me on improvements to the administration of FOIA.

As always, I would like to thank all of the Committee members for your generous donation of time and continued effort and commitment to improving FOIA. And now I'll turn you over to Alina Semo.

>> ALINA M. SEMO: Thank you, David. Good morning and thank you all for joining us for today's second meeting of the 2018‑2020 term of the FOIA Advisory Committee whether in person, via telephone or via live stream. I will introduce everybody to my right in one second. I just have a few preliminary notes that I have to go through. As the director of the Office of Government Information Services and Chairperson of this Committee, I'm excited to kick off our second meeting of this term. We have a very packed agenda today and I will do my best to keep it moving along so we can end on time.

I have a few housekeeping notes before we launch into our meeting. As most of you know, the FOIA Advisory Committee, which reports to the Archivist of the United States, provides a forum for public discussion of FOIA issues and offers members of the

public the 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 email FOIA-advisory-committee@nara.gov. At the end of today's

meeting we will have time for public comments and we look forward to hearing from any

non‑Committee members who have thoughts or comments to share.

An OGIS staff member, Sheela Portonovo, our Attorney Adviser, will be monitoring the

live stream throughout the meeting so if you have any comments, please submit them in

writing and we will read them out loud during the public comment period. For our

Committee members joining us on the phone and if you're watching us on live stream,

Sheela will also be monitoring live stream for any questions you may have. Just be sure

to turn off the volume on the live stream if you're going to be speaking on the phone

otherwise the volumes interfere.

To promote openness, transparency, and public engagement we post Committee updates

and information to our website, blog, and Twitter @FOIA_Ombuds. The URLs to these

sites should be on the slide behind me but they will be soon if they're not already. Stay

up to date on the latest news, activities, and events by following us on social media.

Information about the Committee including member's biographies and Committee

documents, are all available on the OGIS website. We are live streaming this meeting

and will make the video transcript and meeting materials available on the Committee's

webpage as soon as possible. We expect to have all materials related to this meeting

available on our website within 30 days so please bear with us.

For those of you who closely watch the FOIA Advisory Committee meetings and for our Committee members who are here today, you will notice, as David pointed out, that this meeting looks a little different. We will start by hearing from a panel of representatives from four Inspector Generals Offices who will be discussing recent audits and reports their offices have issued in connection with Records Management and FOIA issues. For logistical reasons we just couldn't fit everyone on the same stage.

Also as a result of today's configuration we will dispense with introductions of the Committee members. I will note Jason Baron is unable to attend. I understand the following members are on the phone, Chris Knox, Sarah Kotler, Ginger McCall, Michael Morisy, Patricia Weth, Lizzette Katilius, and Abi Mosheim. At the conclusion of our panel, we will take a 15-minute break during which time we will ask the Committee members to come up to the stage and settle into our regular formation for the remainder of the meeting. Immediately following the break when the Committee is all together we will review and approve the minutes from the September 6 meeting. During our midmorning break, you may wish to purchase food or drink at the Charters Café located on this level but as a reminder, no food or drink is allowed in the theater. Also, please note there are restrooms directly outside the theater and another set outside the café.

As the Archivist has noted, the agenda is shaped on Records Management, the subject of one of the Committee's three subcommittees, the Time/Volume and Vision Subcommittees will have their turn at future meetings we promise.

And now a quick but important message from our sponsors, the AV folks who make these meetings run so smoothly. We had some challenges at the last meeting with the telephones and Committee members calling in. So I always encourage as many Committee members to come in person it makes our lives so much easier. I will work to check in frequently with those on the phone. If I forget, please remind me and we have a list of dos and don'ts. I believe Kirsten sent this around earlier but please say your name before speaking every single time. I am also not good about remembering that. Please bring the microphone in front of you and hold eight to ten inches from your mouth before speaking. Please move the microphone back when you are finished speaking. Please keep wireless devices to a minimum and away from the microphones. And a few Don'ts. Do not press, switch any buttons, do not sneeze, sigh or clear your throat near the microphones or breathe. Do not shuffle papers near the microphones. Do not hit or tap the microphone heads and we have tip sheets to remind the Committee members also when you come back after the break. This meeting is being closed-captioned. By following these instructions, we will be able to make this public meeting accessible to all and make it easier for our folks who will be working on meeting minutes afterwards so thank you for that.

So at this time I am very, very pleased to introduce and welcome representatives from four Inspector Generals offices and I will briefly introduce all of them and they will each give an overview of their work with regards to Records Management and FOIA issues. We want to thank Committee member Jason Baron who suggested this but who is not here today. Although he is not able to be here he was sure to send us a list of 17 questions. And if I forget to answer -- to ask all of them, Ryan is going to help me,

right? Thank you. So I also want to allow time, plenty of time for Committee members to ask questions. OGIS staffers will be holding microphones and will bring them to Committee members on demand. We have also included a handout in your folders with the links to the reports that we will be discussing today and we will also post them on our website. Kirsten did this in alphabetical order but to my immediate right is Janet O'Connell. She is the inspector with the Intelligence Community Inspector General, which conducts assessments within the office of the Director of National Intelligence and across the Intelligence Community to evaluate effective programs and compliance with policy. Recently she served as a team lead for an assessment of Intelligence Community FOIA programs completed in September 2018. Kirsten and I had the pleasure to meet Janet and to work with her so we have a little OGIS blurb in there which is good. More than 30 years of service of federal service in a variety of security, policy, and management positions both inside and outside the Intelligence Community.

To Janet's immediate right is Jeffrey McDermott, Assistant Inspector General for Evaluations and Special Projects, Office of Inspector General at the Department of State. You lead investigations of whistleblower retaliation and high level misconduct as well as evaluations and review of issues with significant public and congressional interest. You previously served as a senior attorney with Government Accountability Office and as a whistleblower protection coordinator with the Department of State. Thank you Jeff.

To Jeff's right is Marta Erceg who is Counsel to the Inspector General at the National Credit Union Administration and also the assistant Inspector General for investigations. She has several hats she wears she tells me. She oversees audits of records management

issues and is also responsible for FOIA in the office. Marta previously served as counsel

to the Office of Inspector General at the U.S. Department of Education and as a director

of legal services at the U.S. Postal Service Office of the Inspector General. Last but not

least is Ken Chason who is counsel to the Inspector General at the National Science

Foundation. Ken has a wide variety of responsibilities including functions related to

FOIA and Privacy Act. He previously served as an attorney with the Department of

Justice Office of Information Policy and also at the Government Accountability Office,

Office of General Counsel, and also in the U.S. Army Judge Advocate General Corps.

So with that I want to turn over to my panelists and I don't know if you guys all worked

out an order in which you want to start or we can do it in a row or we can flip a coin.

Totally up to you.

>> MARTA ERCEG: We didn't work on that.

>> ALINA M. SEMO: We did not work on that. I'm going to look to Ken who is all the

way at the end to go first. Is that all right?

>> KEN CHASON: Thank you and again I'm Ken Chason from the National Science

Foundation OIG. Since 2017 NSF OIG has done two audits or inspections relating to

Records Management. One of them had to do with controls over the foundation has over

electronic Records Management. The other one was somewhat of a related report in

2017 that had to do with some Records Management challenges in the face of a move

into a new headquarters building. We took a look at that as well. In the FOIA realm in

2015 we did a look based on a congressional request at the extent to which non-career

officials had participated or been involved in the FOIA process at NSF and that was easy

to answer. The answer to that was no we really only have two non-career officials in the

foundation proper and we found neither them had a hand in the FOIA process. We had a

National Science Board of 25 presidentially appointed members usually from academia

and they had not had a hand in the –– in any of the board's request so we can get that one

out of the way pretty quickly. The controls over Electronic Records Management, that

one was interesting. We of course anchored that in the Federal Records Act and then

from there we took a look at the NARA implementing bulletins and directives that relate

to Electronic Records Management with an emphasis on email, text, social media. That

we took a look at the issue of electronic federal records created on personal accounts and

we did that from the lens of training and risk mitigation through training. We also looked

at smartphone apps that encrypt or automatically delete messages and potentially create a

risk of records being eluding preservation. In a nutshell what we found is that in general

the agency was doing a great job with Electronic Records Management and I'll just make

a plug for NSF. They were very responsive to our recommendations and I think it

underscored our IG's office can work with the agency for process and program

improvements and this it was a great example of that.

I'll just touch briefly on kind of what we found and what the agency did. With email we

found that NSF was implementing Capstone. We noted that the process did have a little

bit of an issue at the outset. Not all of the required senior officials were captured in the

foundation's Capstone policy and under the Capstone GRS [General Records Schedule]

of course you have to do that unless there's a deviation that's approved and that wasn't the

case here. I think there may have been an interpretive issue on the extent to which

discretion did not include all of them. In the end we recommended that the foundation in

fact conform to the GRS and that's exactly what happened. And the Capstone policy was fully implemented at the foundation.

Text messages and social media, when we took a look of course again NARA guidance says these are possible sources of federal records as well and you have to be -- ensure that they are preserved. We took a look and found that there could be some policy and process improvements in these areas to enhance the preservation idea and to mitigate risk that something would not be preserved. Essentially the agency did do that with text messages that are created on government issued mobile devices. They created a policy that said you send those -- make sure those are managed in your email Outlook folder and then managed according to whatever is the applicable retention period.

Then with social media there were some enhancements made to the public affairs office SOP to ensure that social media, that there were clear directions on capturing social media and making sure that was preserved as well. The foundation is also looking at automated processes to capture text and social media to enhance the process, and I think that is still underway. They are committed to doing that. Electronic records created on personal accounts, as I mentioned we took a look at that from the standpoint of training. There's a NARA Bulletin in 2017 that requires that Records Management training capture that as a required content element that you forward any of such messages to an official account within 20 days of receiving it, and then what we found was that the Records Management training that the foundation had not captured that requirement, and the foundation did improve the Records Management training to do that. And actually went beyond and made sure that everybody knew about Records Management, that it was

imposed as an annual training requirement as it should be, that folks coming on board in the foundation take the training within 60 days and they worked it into their training system automated processes to make sure people are reminded of the training. So they actually went pretty far beyond there.

Smartphone applications that can automatically delete or encrypt, we found that the agency needed to conform to some of the NARA guidance there and make sure that if you're doing that, that you have policies and procedures that require consultation with legal counsel or Records Management officials and, and the agency did create policies and procedures to conform and make sure that was captured but they actually went beyond and we found that they had a mobile device software, management software that allowed them to monitor the downloading of applications and actually to block some of them. But they hadn't been using those features, and we recommended that they do that. And they were very responsive to it and in fact came up with -- they activated the blacklisting capability, came up with a list of the blacklisted apps and then they monitor it every quarter to make sure that that capability is being effective. So they were very responsive to us in that record.

Just briefly mentioned the other report we did. This 2017 had to do with getting into the new building. It had 65% less space for records than did the prior -- the buildings we were in in Arlington, the agency moved out to Alexandria. So they were in the process of reducing their paper footprint, not only to get into the building which was the immediate concern but then also to advance NARA's guidance that you management records in electronic format by 2019. So the agency was in the process of digitizing records when

we got in and took a look. We looked at how that was going, and then we made some

recommendations, found some things that could be enhanced from there. When you start

down that process you need a good inventory. We found that there had been a little bit of

a glitch with the initial paper inventory and that was corrected pretty early on.

You need retention schedules that recognize electronic media if there are old retention

schedules, they are going to be focused on paper format so -- and we were in -- the IG's

office went down that road even before I think some of the -- before we did this

inspection at least to make sure our house was in order and then what we found was that

you had to go through and get your schedules approved by NARA of course to recognize

electronic media or you can't destroy your paper. And if you can't destroy your paper that

sort of defeated the digitizing. In this case this was an added risk because the agency was

moving, they had to send of course the records would go to a contractor then to a

subcontractor for digitization and then back and then over to our Alexandria. So in the

process of all of that moving around there's a risk of loss or accidental destruction so the

agency diligently worked on its retention schedules to bring them up into electronic

media. They -- we found that at the division level maybe there could have been a greater

understanding of what is a federal record as people is were boxing up records and

throwing out things, getting ready to move them over for digitization and getting ready

for the move. That was especially a challenge at NSF because a large part of the

foundations employees are not career government employees. They are often times

academics in science and engineering fields from universities who come to the agency for

two or three years, perhaps under the Intergovernmental Personnel Act to serve as

program officers and in some cases executives, and they may not be as intuitively

familiar with the idea of federal records preservation as folks who have been in the federal system as a career. So training was enhanced. As I mentioned it was made mandatory and folks have to do it within 60 days of coming on board.

The agency we recommended and they did make some improvements as it relates to departing employees. They made sure that the exit form require meeting with Records Management officials in the divisions to make sure we knew where your records are and what they are and where they are and make sure they're accounted for and transferred over for safekeeping and from there.

So the agency mitigated all of the risks and we were happy to work with them to help that happen.

>> ALINA M. SEMO: Okay, thanks very much. Kirsten and I were going back and forth about whether to hold questions until the end and I think we're going to go ahead and do that. Hopefully everyone's jotting down lots of questions. I just want to have an opportunity for everyone on the panel to present. So I'm going to now turn it over to Marta if she's ready.

>> MARTA ERCEG: Sure. The questions you previously provided us you're going to cover those?

>> ALINA M. SEMO: I will try my best. Jason is very demanding. And he's in India. Yes, so to the extent you're not covering them, do not worry about it.

>> MARTA ERCEG: Okay. I think though I might want to address the last question.

>> ALINA M. SEMO: Please.

>> MARTA ERCEG: Excuse me. My name's Marta Erceg and I'm counsel at the National Credit Union Administration. The question was "How can the Inspector General Council of Counsels work with general counsel offices to improve compliance with records law?" I was previously the chair of this group, CCIG. Ken I believe was vice chair at some point so the CCIG is an informal group that comprises attorneys from throughout the OIG community. So when I was chair sometimes an IG or someone would say we need a legal opinion from the CCIG. Well, that would be like me or one of the attorneys working for me. You see what I mean? We didn't have this -- it wasn't like an office of general counsel and it's not really like CIGIE which is the overall group of all IGs that have audit committees and investigation committees, et cetera. But I think that we could pass along to our Inspectors General and Ken's Inspector General is actually the vice chair of CIGIE that the Records Management issues in conjunction with FOIA issues might be a good area for perhaps CIGIE to do a crosscutting project or roll-up audit reports like many of our OIG's have done on Records Management or on FOIA. So that's an idea that we can pass along.

>> ALINA M. SEMO: That would be great.

>> MARTA ERCEG: Okay, all right. Thank you. So just before I move on to Records Management, I just want to touch on my past job at Education OIG. As Ken had mentioned this was a congressional request with regard to political appointees or non-career employees impact on FOIA. I just wanted to let you know a few -- if you weren't already aware of that, that went to many, many OIGs. During my nine- or ten-year commission at OIG there were two requests we received as well as a whole bunch of other OIGs and we looked at, we did a sample of FOIA requests looked at the responses, interviewed a whole bunch of people to see if political appointees had said withhold that

document or redact that and we too did not find any political interference with the FOIA process. We did that twice. I asked at my present IG where I just began in January whether they had received a request and they hadn't so maybe they weren't touching on the smaller IGs. So anyway, but my new office did issue an audit report in March of this year on Records Management. This was something actually that was suggested by someone in the office of general counsel up at the National Credit Union Administration because they were well aware of the legal requirements for Records Management but the resources and attention had not been dedicate to them so they thought we could help by doing an audit of it.

We found in our audit that they did not have a Records Management policy. They didn't provide any training on Records Management to the staff. They didn't update their records retention schedules. They were not disposing of records under their existing schedules. And they did not have a Records Management electronic system at all. So we made a number of recommendations and sort of like this too are very responsive to our recommendations. And NCUA sort of like NSF is sort of like this too. They're implementing many corrective actions including getting an Electronic Records Management system. That's not going to be operational though until 2021. So a number of improvements obviously needed to be made. They hired more staff. They changed the responsibility for Records Management from the Office of Chief Information Officer to the Office of General Counsel and hired I think three or four people for that and also provided Records Management training this year for the first time and developed a Records Management policy for the first time. So a lot of good changes have been made as a result of the audit and their willingness to improve

>> ALINA M. SEMO: So I have to ask, how were records managed before the IG came in to take a look?

>> MARTA ERCEG: Well they had records schedules but I don't think anybody was really adhering to them because they didn't ⸺ so they were just keeping records and not disposing of them. The biggest problem was not disposing of them but also records were not being kept securely in many instances. They entered into a contract with NARA to do a review back in 2016 I think in conjunction with our announcing our audit to see what improvements would be made. So NARA made a variety of improvements, recommendations for improvements as well, as did we in our audit report.

>> ALINA M. SEMO: Okay. Thank you so much, Marta.

>> MARTA ERCEG: Sure thing.

>> ALINA M. SEMO: Jeff, you're up.

>> JEFFREY MCDERMOTT: Sure.

>> ALINA M. SEMO: You have a big report to talk about.

>> JEFFREY MCDERMOTT: So in 2015 after the disclosure of the fact that Secretary Clinton had exclusively used personal email while serving as Secretary of State, the State OIG opened a review of Records Management throughout the five most recent secretaries and we issued two kind of big reports as part of that effort. In May 2016 we looked ⸺ we issued a report on the Records Management and cybersecurity requirements particularly with regard to the use of personal email and personal devices. And then as part of this there were questions about the Department of State's failure to respond to FOIA requests that had actually been submitted regarding Secretary Clinton's email use. So we also took a look at the FOIA processes within the Office of the Secretary. That report we issued in January of 2016.

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So the FOIA report starting with that found several causes of the failure to respond to FOIA requests in the Office of the Secretary. Number one, they weren't necessarily searching email for all requests. They didn't have policies and procedures to how to handle a FOIA search. There wasn't any monitoring or really involvement of senior management in the FOIA process. And finally, there wasn't -- there was training, the Department of State does have training on the FOIA process and how to do a FOIA search but practically none of the officials within the Office of the Secretary had taken that training.

Secondly, our review of Records Management across five Secretaries of State also found several procedural failings across multiple administrations. And they're fairly similar, insufficient oversight of the Records Management process at the Department of State. The Department of State primarily was relying on print and file as a means of retaining email and other electronic records. There weren't any inventories of archived emails and a lot of offices weren't actually retiring email records and other electronic records. They were just kind of holding onto them. There was a separation statement for departing employees, you know, where they certified that, you know, they weren't taking any records with them, that they had, you know, left all appropriate records with the Department of State, but they weren't having departing Secretaries of State sign those statements.

And finally, the department had known for a while that they had lost records but they hadn't notified NARA of that fact in a timely fashion. It was really only when the fact

that Secretary Clinton had used personal email as well as Secretary Powell, it was only really when those hit the news that the department reported to NARA about the loss of records.

So between the two reports, OIG made 12 recommendations to the Department of State mostly addressing these procedural failings, systemic failings, lack of policies and procedures and lack of oversight. The department did agree to all of them and, you know, has made a lot of progress. I think the majority of them have actually been implemented by this time too. So they have certainly made a number of progress on these.

>> ALINA M. SEMO: Would you be able to describe in a little more detail the kinds of changes that have happened since 2016?

>> JEFFREY MCDERMOTT: Sure.

>> ALINA M. SEMO: That would actually be really helpful.

>> JEFFREY MCDERMOTT: Primarily Capstone for senior officials, they have really used that so that, you know, and they've also moved to electronic retention of records rather than print and file which was just, you know, such an outdated means of records retention. And I think was properly one of the main reasons why there really wasn't much compliance with the records retention requirements. You know, people were -- and there was -- early on even before actually Secretary Clinton began her tenure there was a recognition that this was an outdated means. And the department actually knew at the time, you know, that compliance wasn't what it should be but they have made tremendous strides since that time in moving to an electronic means of retaining records. With regards to both Records Management and the FOIA process, they have also adopted

policies and procedures to make sure that, you know, folks understood, you know, what was required of a FOIA search and what was required for retaining records.

And finally, there's been a lot more emphasis kind of tone at the top about reminders to employees that Records Management is important and what their specific duties are in that respect. And as well as when there have been numerous reminders when folks leave, what they have to do to make sure that the records they created while at the department have been properly retained

>> ALINA M. SEMO: Okay, great. Thanks. That's very helpful. Okay, Janet, you're up.

>> JANET O'CONNELL: Janet O'Connell from the Intelligence Community Inspector General and I'm happy to be here to talk about our recent assessment of Intelligence Community FOIA programs which we wrapped up in September. So we looked at six organizations, we call them IC elements, and I'll spell them out. Central Intelligence Agency, CIA, Defense Intelligence Agency, DIA, National Geospatial-Intelligence Agency, NGA, National Reconnaissance Office, NRO, National Security Agency, NSA, and Office of Director of National Intelligence, ODNI. Our goal for this report was to look at the effectiveness of the programs in responding to FOIA requests in particular how they prioritize, coordinate, and processes request to meet deadlines. We also looked at how they communication with requesters and finally we looked at consistency in responses in terms of if they're responding to a FOIA request, are they providing information in one request and possibly withholding the same information, are there mechanisms in place to prevent that sort of thing. We interviewed lots of folks across the IC in these agencies as well as at Department of State and Department of Homeland

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Security and we met with OGIS and OIP and got a lot of good information from, you know, the real experts, the FOIA professionals as well as Chief FOIA Officers, Records Management folks, transparency folks, and looked at various public records.

We had a number of findings here coming out with ten recommendations overall, and I'll speak about the four sort of high level findings.

So within the Intelligence Community the Office of Director National Intelligence, ODNI, has this really important integration rule across the whole IC. With regard to FOIA we found they weren't doing a whole lot of that. And in particular, you know, the FOIA statute gives authority to individuals, departments, and agencies to manage their own FOIA programs. But for the issues that they have in common, we really found that the DNI had an important role to play in addressing those issues and bringing them together. And in the end the DNI agreed with all of these recommendations. For one, they had looked at FOIA issues. In 2016 they had found they weren't performing really well and they had some issues that were raised to their senior governance forums and they had come up with sort of a FOIA improvement plan for themselves but they just hadn't followed through to implement it. So one of our recommendations was to do that.

We speak a little bit about technology in the report, and I know this Committee has had subcommittees look at technology and we looked at a lot of the same things. The effectiveness of the, you know, enterprise-wide Records Management systems, search, redaction, just coordinating across the different organizations when you have, you know, FOIA requests that involve multiple equities, you know, you're coordinating across.

We found that whole consultation process to be very cumbersome and the IT in need of improvement.

Forums for folks across these elements to get together and regularly collaborate and try and tackle these tough issues, we thought it was important for them to have a regular body to do that.

And then these two important government‑wide interlocutor I'll call them, OGIS and OIP, who are really the government experts on these issues have been the Intelligence Community although regularly working with them could do a lot more with them. In particular because OIP does provide the government‑wide guidance and OGIS has the ability to pursue or make changes to the statute so our recommendation is that the IC engage a little bit more with them and, you know, they concurred with all of those recommendations.

Our second high-level finding dealt with just processing inefficiency and all of these IC elements are working very, very hard in their FOIA programs in making improvements to try to meet deadlines, but we found just by all the efforts it's still very difficult. And there's a lot of reasons for that and we go into some of the details, you know, resource challenges, personnel turnover, complexity of requests, volume of requests, litigation, we talk a little bit about the impact of litigation on these programs, and the IT.

You know, we call out some best practices like, you know, back log plans are important, looking at the oldest cases, all the things that OIP recommends we look a look at and improving this whole consultation issue that is a problem.

And also with regard to that the Chief FOIA Officers do have an important role to play and they do, you know, look at the programs annually but we found there could be a little bit more feedback mechanism when those annual reviews are done, an awful lot of data is collected but some things actually done with this data that they're reviewed and recommendations are made to agency heads. So we saw some need for improvement there.

In terms of communicating with requesters, really an important topic and programs are working to improve that but could do more with regard to putting more on their website, folks are regularly engaging with requesters but we think there could be more with that. We talk a little bit about the draft policy which is not yet in place, the release to one, release to all, where organizations are responding to FOIA requests and have all of this valuable information that has been released to a requester, it would be ideal if they could go ahead and post that – all of those requests to their website. Of course there's resource implications of that. But we do report out on how each of those six IC elements have done with that.

And then finally, the fourth finding had to do with this issue of consistent FOIA release determinations. And we were not able to find that this was a significant problem within the IC. We found that each of these IC elements did have mechanisms in place to prevent

this sort of thing from occurring. An important part is being able to do the research up front to know what exactly what previously has been released and to ensure that consultations are done properly so that one IC element might not know the equities of another. These are big, big organizations and it's important for them to get and training and recognizing what might be the equity of someone else so that they can flag it and get it over to them so that all of these are properly reviewed.

So in the end we did have ten recommendations and all of the IC elements concurred and are moving forward and we'll be following up to make sure that these are all completed.

>> ALINA M. SEMO: One question I do have is did you find there was an issue related to culture in terms of the Intelligence Community and sharing of information? Was that an issue at all or a theme at all in what you were finding?

>> JANET O'CONNELL: I mean I wouldn't say it raised up to a theme that was included in the report as any sort of finding. If any we saw it's certainly improving. We have transparency officers now and the culture has shifted from years ago. There's always going to be the need to protect national security information and there's always going to be that balance between sharing and keeping what needs to be classified "classified." But the FOIA improvement plan, the first line in the FOIA improvement plan that the ODNI had, had to do with rules of the road and understanding ‑‑ protect what needs to be protected but release what can be released. So I think that was important to note.

>> ALINA M. SEMO: Okay, great. Thank you so much. I saw lots of our Committee members taking notes, so I am hopeful that there are some good questions out there, and I know we have folks ready with microphones, and I want to call up ‑‑ I know -- Martha's

getting a microphone right now. We will be ready in one second. And I want to invite

those on the phone, if you have any questions, to chime in as well. Don't be shy.

>> Can I ask a question?

>> ALINA M. SEMO: Yes, please.

>> What do the transparency officials do?

>> JANET O'CONNELL: So they work directly with the public. They try to understand

what issues the public most wants to know about, and then they can pursue

declassification, historical research projects that can be declassified and made available to

the public that are of greatest interest to the public.

>> Thank you.

>> ALINA M. SEMO: Okay, we have a question.

>> EMILY CREIGHTON: Hi, I'm Emily Creighton with the American Immigration

Council and I'm on the FOIA Advisory Committee. A question I think, it was obvious

from the way you described some of the investigations that took place but I wondered if

you could talk a little bit about what triggered the decision to do this sort of in depth

analysis of record keeping and compliance with FOIA and other, you know, methods of

making sure that you were in compliance with the law for your individual agencies. And

then I'm really curious about the follow‑up with the agencies. So where and what is

there ‑‑ is that sort of outlined in the decision making on the part of the agency when

they decide how to come into compliance or how to agree with the recommendations that

you've set forth? And what ‑‑ how does your ‑‑ how do the Inspector Generals follow

up with the agencies?

>> ALINA M. SEMO: Whoever wants to answer first?

\>\> MARTA ERCEG: I'll answer. So with regard to our recent Records Management audit, the Office of General Counsel, someone in the Office of General Counsel at the main agency because they recognized there was a need for resources to be dedicated to Records Management so it was a referral from them. I mean we included it in our audit plan and made an independent decision about whether we would do an audit and we decided to go ahead and do one. And then all OIGs have processes in place to make sure that agencies are taking corrective action so that they can close the recommendations so we all have tools and processes to follow up with that.

\>\> ALINA M. SEMO: And is there a time frame for that?

\>\> KEN CHASON: If it's a formal audit there's ⁓ I think there's a circular that describes the audit resolution process and provides time frames and that's kind of government wide. If they're inspections, it's not subject to that. It's a little bit less formal but it may be governed by individual agency processes.

\>\> MARTA ERCEG: Right. Back a couple years ago the Office of Inspector General agent which governs all OIGs was modified that we have to include, we do two reports a year to Congress, semiannual report to Congress is what it's called and we have to report on open recommendations.

\>\> KEN CHASON: And as far as our Records Management reports, the one on Electronic Records Management, what triggered that was a congressional request to us that went into some of the issues that we looked at. And it was good. It opened you the door for us to get in and look at that.

The one on relating to the move obviously the big driver there was we realized as part of our ⁓ we do a look ⁓ we plan our audits and our oversight work every year and while

that's a big thing that's coming and there's going to be a huge challenge with Records Management so it was a good risk area for us to look at.

>> JEFFREY MCDERMOTT: Ours, too, was prompted by congressional requests. And Secretary Kerry actually had also asked that our office look into it. With regard to compliance, we do have kind of an institutionalized process to get, you know, we ask the department for milestones when they say that, you know, they're agreeing to implement a recommendation and so we, you know, continually check back with them to make sure that they've actually taken the actions that they've told us that they were going to.

>> JANET O'CONNELL: And ours was not initiated by Congress. We just noticed that this was raised to the senior levels of the DNI in processing and thought it was a good timely issue to study and we do follow up regularly to ensure all recommendations are implemented.

>> KEN CHASON: We do also.

>> ALINA M. SEMO: All right, thank you. Tom?

>> THOMAS SUSMAN: Tom Susman, Advisory Committee member. First an observation, it seems to me that the work that all of you have done is extremely effective, relevant to what we're doing and the results if you achieve results, ultimately that's quite amazing which leads me ‑‑ of course each agency has different issues, different, different types of records, different problems but I like the idea that Ms. Erceg got about getting together with IGs and rolling up the findings from the various agencies in ways that you can share among yourselves best practices, resolution to challenges, training, solutions and things of that sort so I wonder if you would elaborate on that and maybe we could even be helpful in promoting that kind of a activity.

>> MARTA ERCEG: Well, as I mentioned, I will definitely mention it to my Inspector General who serves on the CIGIE Audit Committee and Ken is going to mention it to his Inspector General who is the vice chair of CIGIE. CIGIE frequently does what they call crosscutting projects. It's actually something required by the IG Act that they do collaborate to address bigger issues that aren't just particular to one or a couple of agencies and it seems like a good idea. I'm not the ‑‑ we're not the decision makers on whether they're going to undertake a crosscutting project but I will definitely mention the interest in doing this that this group would be interested in helping.

>> JEFFREY MCDERMOTT: And one other thing, one other initiative that CIGIE has taken is actually the oversite.gov website which has rolled up all of the Inspector General reports across the federal government. And it's really been useful to IG offices, you know, when you're at the start of a project or you're looking for ideas on how to tackle a project or what might be management challenges at your agency that you should take a look at. You can take a look at what other IGs have done on that same topic and, you know, how they approached the project and it's actually been a really useful tool.

>> ALINA M. SEMO: Kirsten was great to remind we should let everyone know CIGIE stands for the Council of Integrity and Efficiency of Inspectors General. Did I get that right? Actually, OGIS had the opportunity to come and present at a CIGIE meeting recently thanks to Allison Lerner, and thank you Ken for thanks for your bosses graciousness and we're happy to serve as a liaison to try to connect the groups. Maybe we can get on the agenda of one of the CIGIE meetings and come and present in a similar fashion.

>> MARTA ERCEG: At a CCIG meeting Council of Counsels to IG meeting?

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\>> ALINA M. SEMO: We can do it that way or to CIGIE or both. So Tom, hopefully that will serve as a good bridge.

\>> ALINA M. SEMO: Yes.

\>> JOAN KAMINER: Joan Kaminer, EPA. I have a question about the separated employees forms I think both the Department of State and the National Science Foundation mentioned but I imagine it applies to all agencies that are represented here. In particular, you both mentioned that you found that there were potentially lacking in process or procedures or checks for ensuring that separated employees' records are managed and that certainly plays into the FOIA process as well for knowing where the records are or ensuring that especially permanent records are maintained properly. I was curious if you have any additional information on how that is actually particularly with regard to, you know, the National Science Foundation mentioned that the forms require the individual meet with the records officer. I imagine that's not always a possible ‑‑ it's not always the result, and so in situations where agencies can't ensure that separated employees have met the requirements that are outlined in the forum, is there any failsafe or check or other steps that are in place?

\>> KEN CHASON: For NSF I ‑‑ you know, I'm pretty happy to say I just don't know what other backups may be there. I know the agency was very responsive toward making sure the exit process form was included a base touching with Records Management official. Typically there are even ‑‑ there are backup folks who handle things so I'm just speculating I imagine if the Records Management official were not available that there would be someone else who could help step the employee through the Records Management issues and records they had under their custody and that type of thing but I can look into it and see what else.

>>JEFFREY MCDERMOTT: And at the Department of State there is ‑‑ there are now, you know, procedures. Each bureau has its own records officer and the separation process does call for a departing employee to meet with that individual, meet with the records officer, you know, go through hopefully the, you know, fact that they're not to be taking records with them and then have them sign the departure form, the separation statement, certifying that they surrendered all federal records.

>> ALINA M. SEMO: Janet, is that something you looked at as part of your ‑‑

>> JANET O'CONNELL: No, we didn't look at that at all.

>> MARTHA MURPHY: Are there any questions on the phone?

>> JAMES: Pardon me, James Jacobs, Stanford University and a member of the FOIA council. I wonder if you could send your Records Management audits that you've all mentioned a bunch of documents that you've done in the previous couple of years, if you could send them to Alina that would be really great. I would love to see how the previous FOIA committees recommendations kind of line up with what you've found in the audit and how we can, you know, help move those things forward.

>> ALINA M. SEMO: Good news. We've already provided those to you. They're in the folder that Kirsten give you today. We're also going to be posting them on our website.

>> JAMES: Awesome. Thank you. I had one other question. I think Janet you mentioned the release to one, release to all. Is that a general policy across executive agencies or is that something that is starting to be talked about in agencies? I think that's a really interesting policy.

>> JANET O'CONNELL: Oh, okay. So I really should defer to OIP to speak to the details on of that because OIP, it's their effort.

>> MELANIE PUSTAY: I'm sitting right here, hi, Melanie Pustay. Sorry. So we've been encouraging agencies to follow a release to one, release to all policy for quite a few years and we had a pilot where we studied the impact of actually implementing the policy and one of the things that I think has always been very remarkable is that ODNI was one of our seven volunteer agencies that participated in a pilot and I think we showed a really ‑‑ they were themselves a really strong example of an agency that people might instinctively think of as being more withholding oriented and yet they stood up and agreed to participate in the pilot and have basically adopted a release to one, release to all practice as have many other agencies. So it's something that especially now that the FOIA Improvement Act of 2016 requires agencies to post at three requests, an easy way to make sure you're satisfying that requirement is just to post after one request. So there's lots of good reasons to do it and obviously the other thing is taxpayer resources are going to processing requests. So it makes sense that when we do the work to process records for release, if we make them available to everyone, not just an individual who happened to ask for them. So there's lots of good reasons to have the ‑‑ to adopt the policy. Of course the challenge with doing so as Janet alluded to was there are resource considerations. It takes time and money to code documents to put them up on the website. We can't just ignore that reality. It's typically other people than the FOIA office that are charged with doing that and so that is the struggle that agencies have with implementing it.

>> MARTA ERCEG: Melanie, can I clarify something. You said many agencies are doing release to one, release to all.

>> MELANIE PUSTAY: Definitely, agencies are reporting to us in their Chief FOIA Officer Reports that they're following just as a matter of discretion or just practice

themselves a release to one, release to all. And certainly agencies are doing it to varying degrees. Not everyone is literally doing every single release but certainly agencies every year report lots of good examples of material that they're putting up on their website and certainly records that are requested that you know are of the subject of interest by the public are perfect candidates for posting.

>> EMILY CREIGHTON: Just a follow up questions to that. Emily Creighton, with the Committee. I just wanted to follow up with that and wondered if you had looked at the posting after three request issue and whether that was something that the agencies that you looked at were actively doing or responsive doing.

>> MARTA ERCEG: We haven't looked at it at the National Credit Union Administration and we didn't look at it at Education OIG but I have conversations with my FOIA counterparts in Office of General Counsel and they've assured me that they're doing that but it's not one request, it's three, yeah.

>> MELANIE PUSTAY: Melanie Pustay. We've asked agencies again for their 2019 Chief FOIA Officer Reports that will come out in the spring near Sunshine Week. We are asking every agency to report on the procedures they have in place to be sure they're implementing the rule of three which is the legal requirement under FOIA that you have to post when you hit three requests. So we have a nice body of material coming in the Chief FOIA Officer Reports from every single agency about that.

>> ALINA M. SEMO: Thank you, Melanie. Ryan, I don't want to put you on the spot but as the subcommittee co‑chair, the Records Management subcommittee co-chair, do you have any questions?

>> RYAN LAW: Hi, Ryan Law from the Treasury Department. I had a general maybe point in question perhaps and maybe it's something that I would encourage the

Committee and our subcommittee might look at more closely and I think Mr. Chason mentioned oversight.gov -- I'm sorry, another panel member mentioned it but it's really a tremendous resource and I think you mentioned it was -- does anyone have any insight or knowledge of oversight.gov like how we stand up, who maintains it, how that came to be, that type of information?

>> ALINA M. SEMO: Jeffrey, since you talked about it.

>> JEFFREY MCDERMOTT: Yeah, sure, so CIGIE, the council of IGs, it really was an initiative that they felt was important and I think actually the Postal Service IG actually was the one that actually built it and CIGIE itself actually doesn't get any funding appropriated by Congress but so the Postal Service IG kind of took the initiative to kind of, you know, build this site and, you know, with the help of several other -- all of the other IGs kind of uploaded their reports, you know, from resent years to it but it is a great tool, you know, because we all learn from each other and you can save a lot of work too and when you're designing an evaluation or an audit or an inspection by looking at what other IGs have done.

>> MARTA ERCEG: And IGs are routinely updating it with their issued reports.

>> RYAN LAW: It's a -- in my view it's a great example of a government‑wide almost resource where you can go and search and get OIG reports from many agencies. You don't just have to go to the State Department [website] to get to the report. The oversight allows you to see the whole picture.

>> ALINA M. SEMO: It's like FOIA.gov.

>> RYAN LAW: Right. Looking at Jason's questions, I want to make sure we hit those. It seems we've answered several of them as part of the discussion. One question he had was does a designated individual in the IG office track reports and recommendations

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coming from OGIS, from OIP on a regular basis or from the Advisory Committee? Is there a process to monitor those types of recommendations and perhaps someone could talk about that.

>> KEN CHASON: We don't have such a person at NSF, at OIG but I think it's a good idea, certainly to do that. We do ‑‑ we do try to stay in touch with developments in the FOIA and Records Management community as we obviously have our own internal FOIA program and we're a component of the agency itself but then also from an oversight standpoint to make sure that we know what's going on and we factor it into our risk based, you know, audit planning and that type of thing.

>> JEFFREY MCDERMOTT: Yeah, likewise. At State OIG, we have someone that looks at it from, you know, our FOIA. We have a FOIA coordinator, dedicated FOIA coordinator who does, you know, keep track of such things for purposes of making sure that our own FOIA processes are up to date. But I think it's a good idea for our, you know, when we ‑‑ when we're evaluating the Department of State's FOIA processes to keep up to date on those recommendations as well.

>> RYAN LAW: And one last question for the group. I'm not asking you to divulge think any future plans for investigations but can you kind of forecast your future activities in FOIA and Records Management over the next several years, particularly in light of upcoming 2019 and 2022 requirements to around Electronic Records Management?

>> KEN CHASON: We do the audit planning annually. I know we don't have anything specifically focused on that in the 2019 plan. Not to say that we might not find room for it although resources are sometimes an issue there but I do think as far as the 2019 requirement goes, we did cover that in the 2017 report.

>> MARTA ERCEG: We don't have anything in our current audit plan for it but we will follow up with regard to the 2019 requirements with them.

>> JEFFREY MCDERMOTT: I'm not sure that we necessarily do either but yeah, we also plan our work just a year in advance.

>> JANET O'CONNELL: Yeah, we're in the same place. We don't have anything on the schedule for fiscal year '19 to look at Records Management.

>> RYAN LAW: Excellent. Thank you.

>> ALINA M. SEMO: Thank you for planting the seed, Ryan.

>> RYAN LAW: Of course.

>> ALINA M. SEMO: We can take that back. Mr. Ferriero has a question.

>> DAVID S. FERRIERO: A question ‑‑ let me start with a comment. Thank you all for participating. This is something that's been very important to me to get the Inspector General community involved in Records Management and FOIA. In fact, early in my tenure here I was invited to speak at an IG annual conference about the importance of Records Management and trying to get people engaged in that. We have -- I should tell you for several years my Inspector General has been proposing to CIGIE Records Management as a crosscutting project and has been rejected for several years so I applaud your efforts. Please continue to do that.

My question is every agency does a self-assessment, an annual self-assessment. I'm just curious whether you're aware of that and whether you monitor that to get some sense of how things are going in your agency.

>> JANET O'CONNELL: We don't regularly monitor it. I think our information management division, you know, has a lead for Records Management so I'm sure they're

on top of it but it's not something we regularly monitor. But I ‑‑ we did look at those as part of our FOIA review and thought they were good comprehensive reviews.

>> JEFFREY MCDERMOTT: As part of our Records Management evaluation we actually looked at the Department of State's annual reports and actually were fairly critical about some of the things that they were reporting. You know, it was ‑‑ you know they were reporting ‑‑ they were making several certifications regarding their management of email records that, you know, weren't actually accurate across the department.

>> MARTA ERCEG: We at National Credit Union Administration don't look at it regularly but we did look at them as part of our Records Management audit. They did not get a very good score from NARA with regard to the self-certifications. Upper management wasn't aware of that. They've since become aware of it so that more attention is being paid to it. And mostly I think the last of score related to the fact that they didn't have records, comprehensive Records Management policy in place.

>> KEN CHASON: And we are aware of it but we have not also regularly looked at the agency, how they're doing with it.

>> ALINA M. SEMO: Okay. Despite the fact that our IG has been trying to lobby CIGIE, Marta, and Ken I hope you still will take back our very great interest in promoting the dialogue and starting to ‑‑

>> MARTA ERCEG: Sure.

>> ALINA M. SEMO: To cross pollinate ideas. I think we're very interested in that. So please help us fight the fight.

>> MARTA ERCEG: We will.

>> ALINA M. SEMO: I just want to make sure that folks on the phone, our Committee members have had a chance to think about any questions they have. You've been very quiet. Hopefully you're there. Okay. All right. If there are no other questions, why don't we go ahead and move to our break. I'm letting everybody out five minutes early. Don't abuse it. Please be back at 11:30 sharp. And please join me in a round of applause for our panelists. They did a wonderful job. Thank you again.

[Applause]

[Short break]

>> ALINA M. SEMO: Welcome back everyone. Thank you for respecting the 20‑minute break as opposed to 15 minutes. So before we hear from Laurence Brewer, now that we're all back together as a Committee, I want to go ahead and have us approve the minutes from our September 6 meeting. I understand the Committee members have had a chance to review the minutes and all comments have been received and incorporated. Kirsten, is that correct? Okay, no one has comments. Therefore based on the fact that no one has comments I will now entertain a motion to approve the minutes.

>> So moved.

>> ALINA M. SEMO: Thank you for seconding although apparently in our rules we don't have to. Anyone on the phone opposed to approving the minutes? Okay. And no one ‑‑ I'm not seeing any dissentions here so we're all in favor, aye?

>> Aye.

>> ALINA M. SEMO: Okay. So the minutes have been approved. We will make them available for public inspection. We'll post them on our website. So thank you very much for sticking it out past the break, I appreciate that and I am now pleased to welcome my colleague, Laurence Brewer who is the Chief Records Officer for the U.S. Government,

we call them CRO for short. The CRO's office which works directly with federal agencies to improve Records Management across the federal government and promote goals of managing government directive. Laurence joined NARA as an appraisal archivist and has held an array of positions at the National Archives including Director of the Life Cycle Management Division, Director of the Records Management Operations Program, and Electronic Records Policy Analyst. Laurence will present a few topics today and he has enough time for questions, comments, and concerns from the Committee. So with that, Laurence, over to you.

>> LAURENCE BREWER: Well, Alina. I appreciate the invite. I'll have to get used to this dynamic, looking over here and looking over here.

>> ALINA M. SEMO: I'm sorry.

>> LAURENCE BREWER: I was here early so it was nice to hear all the conversation about Records Management topics as we were having the IG panel. So, you know, we've had our own interactions from the office of the Chief Records Officer with the IG community. I've been to the CIGIE meeting and presented on Records Management I think twice. And we regularly talk to our own IG at NARA to get a sense of what's going on not only with NARA but what's going on with the community and where we might be able to help. And James Springs, our IG has been very good in getting those introduced to CIGIE and trying to keep Records Management as part of that agenda so very interesting panel. So what I want to talk about today if we can go to the next slide or really what I will call the trending topics in Records Management. I only have really 20 minutes because I want to leave some time for questions. And 20 minutes is not really enough to cover everything that's going on in Records Management today so I have to kind of limit myself.

But before I get into the trending topics that you see up on the screen, I did want to bring to your attention some of the good work that we have been doing over the past few years to proactively post many of our key products, of our engagements with agencies that we are doing to promote openness and transparency about the process. We want to, you know, to the greatest extent that we can educate the public and our key stakeholders about what we do.

So in addition to our active blog, Records Express, I encourage you to bookmark and Google Records Express. We have over the last few years been publishing routinely, status reports and relevant correspondence on unauthorized disposition cases when there are allegations of disposal or removal of records from agencies. We have been routinely posting the annual Records Management reports from agencies and there was some discussion about that in the last panel. We post the annual Records Management Self-Assessment but we also publish the individual reports from agencies, the records officers and the senior agency official for Records Management. There are reports related to email and strategic direction around Records Management within those agencies. And you can find on our website the most recent reports from last year and also dating back several years.

We also -- I wanted to highlight the fact that we have been -- because I think it's really relevant having just come out of an IG panel been devoting significant resources to oversight. So we have our own oversight program within the office of the Chief Records Officer where we do inspections of agencies. And we have been routinely posting

inspections of agencies and the full reports unredacted as they were submitted to the agency on our website so I encourage you to go to our oversight page on the Records Management website and you can pull down the various Records Management inspection reports.

So there are a lot of other things that we're doing. We're always looking for additional ways that we can make some of these key products, whether they relate to policy, oversight, reporting, and as we'll talk about in a few minutes, scheduling an appraisal. More available on our website so that we can further engage with the public and our stakeholders.

So onto the trending topics. So the first one I want to talk about is one that we have been spending quite a bit of time in 2018 working on. So one thing that I do want to say is that within our office if you have been following the managing government records directives that came out in 2012 and the new NARA strategic plan there are a number of goals and targets in there that really focus on transitioning the government to a fully electronic model. So trying to push all the federal agencies to digital government is where we've been focused and trying to get agencies to create records digitally and maintain them digitally. So one of the things that we did have to recognize as part of this is that there's a lot of legacy paper out there. So we need to be able to provide -- because that's our job in the Office of the Chief Records Officer -- provide regulations, requirements and standards for agencies when they are doing the digitization of those legacy paper records.

So one of the requirements, and it was part of the 2014 amendments to the Federal

Records Act was that NARA was required as part of that law to issue standards for the

digital reproduction with a view toward disposing of original source records and that

applied to both permanent and temporary agency records. So we have been working on

that for several years and we were very pleased in September of 2018 to be able to post a

regulation for the digitization of temporary records. So it's a very high level regulation.

It does have standards. But because these records are not permanent in coming to NARA

and they're needed for agency business, the requirements were at that higher level

because it's really up to the agency to make sure that they're doing what they need to do

in terms of quality control and resolution to support their business.

So we are adjudicating comments on that proposed regulation. We expect to complete

the adjudication of the temporary digitization rule in December, and hopefully be able to

go final with the temporary role in early calendar year 2019. So I also want to note that

at the same time we are working on the more important role which is the one covering

permanent records and what agencies need to do in terms of digitizing those source

records which is significantly more compliant because it has requirements related to meta

data and capture and higher standards which generally map to industry standards for

the ‑‑ for high quality digitization of hard copy records. So we are working on that and

we hope that we will be able to propose that regulation for the permanent records in early

2019 and have that available for comment.

So as we do both of those things we have some information up on our website in terms of FAQs that we have heard about digitization of source records. We will be doing more FAQs as we get closer to producing the permanent rule as well, so look for those.

The second one, status of high profile draft records schedules, I'm sure all of you have you've been following listservs and our blog have seen a number of the comments related to records schedules that have gotten a lot of interest. So there's really two things here. So there's been a lot of interest in particular record schedules, and I'll talk in a little bit more detail about the one that was submitted by the Department of Interior, but it's not just the schedules themselves, it's also the process. So one of the things that we have been trying to do in writing blogs on Records Express, in talking to stakeholder groups, civil society groups, conferences, and I believe I'm going to Chicago in January which I'm really excited about, to talk to I believe it's the American Historical Association on this topic specifically.

And what we're trying to do is really sort of provide a little bit more transparency and education about, you know, how the process for approving record schedules happens. It's a process that we've been working for many years. There are a number of requirements and much of it is defined by the Administrative Procedures Act and working with the public through the Federal Register. So part of that is pretty well defined but we of course have our own internal processes that define how we work with agencies when they submit a request for disposition.

So the process has been playing out, and the fact that we get a lot of comments on certain schedules is actually a good thing. I mean we're looking for ways to make sure that we surface issues before the record schedule gets signed by the Archivist of the United States. So this is the way the process is supposed to work. We make the schedules available for comment and then my staff is then assigned to then work with the agency to do additional site visits if needed to make sure that the retention period and the disposition instructions are appropriate for each schedule item that we do.

So what's been interesting about this whole process is how we have through this public engagement identified areas where we can make improvements to our process. And this was something that we knew we were going to do anyway. It's actually part of the new strategic plan in Goal Three to be able to streamline, modernize the process by which we work schedules and interact with agencies. So it's given us a lot of information and great place to start in sort of working through that process with agencies.

So let me then turn now to the specific case. So I'll talk a little bit about the Department of Interior schedule because it's gotten a lot of publicity and just sort of explain where we are. The schedule itself has been in development for more than two years and it is, you know, typical of what a lot of agencies are doing in terms of consolidating authorities using a big bucket approach. So in this particular case with the Department of Interior they had 411 schedule items that they were then trying to group into fewer buckets. So they were going from 411 schedule items to 23 items with 18 of them being temporary items and five being permanent. So there's a lot of reason behind this from the agency's

perspective and why they would want to do this. And essentially it comes down to maybe three key factors.

So from the Department of Interior's perspective with all of these bureaus below them, one of the things they wanted to do was ensure consistent implementation across the various DOI bureaus on specific Records Management items. So they didn't want one bureau with one set of records disposing and managing records differently than similar records in a different bureau. So the department took the lead in identifying all of these authorities and then be able to produce a schedule that all of the bureaus could use and Records Management could be consistently executed.

The other reason for going down to the fewer buckets is to simplify management and disposition of the records. So specifically for the users, if you give them fewer authorities for which they are responsible to manage, theoretically they make fewer errors in the execution of the disposition. So we have known for years as agencies were moving to electronic record keeping and they're trying to build Records Management applications, if you populate a drop‑down list or a pick list for a user with 400 items, it's probably not going to be done very well. But if you give them three or four and they are the right three and four, then you have a much better chance of making sure that Records Management is done effectively. So that's a very key business reason.

And I think the third reason is the one I just alluded to is like you can't implement and automate Records Management and move to electronic record keeping and you've got 400 or more authorities. It's just ‑‑ it's too burdensome to set up. It's too complicated to

execute and Records Management just doesn't get done effectively. So we understand and we have understood and we produce a lot of guidance and FAQs about how to do big buckets flexible schedules effectively and, you know, a lot of what we have been doing is trying to talk about why this is important because this kind of an approach to scheduling actually makes sure that we get the right permanent records and that agencies aren't making errors in executing disposition against the temporary records they need for their business.

So that brings us up to date. The current schedule, the comment period closed the last Monday. We have received over 4,000 comments on the Department of Interior schedule which is not typical, to say the least. And our job now is to go through each and every comment and then be able to evaluate it ourselves, work with the agency, do additional site visits if needed to evaluate the particular authorities and produce a new version of the schedule that we can then post the Federal Register with the statement of concerns and the general theme that were present in the comments and then allow the public to provide additional comments on the schedule revision. So there's still quite a ways to go in terms of getting this particular schedule done. I am not going to stand here and give you an over and under on how long it's going to take to adjudicate 4,000 comments, but it's not going to be done before Christmas. So this is something we'll be working on into the next calendar year and of course we're going to try to work with the agency who understands it's a priority to try and get this schedule revised and to a point where we can post a final Federal Register notice.

So let's go to the next topic because it does relate a little bit to this topic of schedules. One of the things that as part of the process of ‑‑ and I'm sure those of you who have commented on the DOI schedule have seen ‑‑ the current process for commenting and getting comments from the public on draft records schedules is we post an abstract in the Federal Register then agencies have to email us for a copy of the schedule and then we email it back to them and then they email comments back to us and then we email a response to comments back to them. So it sounds very ‑‑ I don't know ‑‑ 1985, 1990 and we're here in 2018. So we recognize this is a problem and this is one of the areas where we want to do some modernization.

So one of the things that we've been working on this year is trying to figure out the best way to proactively post all draft record schedules on a website and then use the website and the functionality within the website to engage with the public so that the public and the stakeholders can pull down or first get alerted that there are schedules being posted, review the schedules, comment on the schedules and then we can comment back using the website. So we have been in the process of exploring options. I can tell you that one of the options that we are looking at very closely right now is regulations.gov. They actually have improved the functionality of that website to the point where we can consider it as an option. And that's essentially where we are right now in terms of making the commitment to using the website. I will say now, since we are in December, we don't want to post any Federal Register notices in December or even into January that will require the public to email us. So we are going to hold on posting to the Federal Register using the old process until we can get the new web‑driven process in place.

And the reason why I say we're going to hold and I feel okay about that is because I really believe that, you know, we're looking at like January, early February at the latest where we will have a solution if it's regs.gov or another solution that we're working on in house in place to be able to provide that functionality.

So one of the things that I do want to say is we will be letting the public and the external stakeholders know that we are doing this via Federal Register notice. So the one notice that we may publish before January is an announcement in the Federal Register that says we are making this transition and we will invite feedback via the notice. But then when we start posting schedules they will be on a website and not using the previous process. So we're very excited about that and we think that's really going to promote transparency and really give people a chance to be alerted about schedules when they get posted and give them the opportunity to very easily comment on schedules.

The last topic I want to talk about before we get into some Q&A is creating adequate and proper documentation. So this is an interesting topic and, you know, it's one that has been in the news and I know it's being reviewed in the courts in a number of cases related to certain agencies and it's a little different of a category for us in the Office of the Chief Records Officer. So we have statutory authority, and we do as I mention investigate with the agency cases of unauthorized removal of records or destruction of records, but this is different. This is a case where claims are being made against an agency that they are not creating adequate and proper documentation of their activities so there is nothing there. So one of the things that we have, you know, when we're asked this question why aren't you doing something about that, the requirement in the law is that agencies and

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responsibility is assigned to the head of the agency and it's generally delegated down to a Records Management program, is responsible for ensuring that agencies are creating adequate and proper documentation of the policies, decisions, organizations, activities within their agency. And as a rule agencies do this through policies and directives. So one of the things that we do in our office first, we provide training to federal agencies and we have a bulletin that we issued a couple years ago about specific items that need to be covered for all staff and agencies when they do their training, and this is one of them so it gets reinforced through the training. It points to the policies and directives that agencies have or should have in place. So what we do is essentially monitor how agencies are doing, you know, this and making sure that they are creating the adequate and proper documentation and we ask questions through the annual reporting and the Records Management Self-Assessment to make sure that they self-certify to us that they are doing the training and that it covers the required elements in the training.

So this is an area that, you know, we are certainly aware of and monitoring and keeping track of and, you know, it's one thing that we can do going forward with our oversight program as we do inspections of agencies to be able to look at the policies and directives that they are creating to make sure that this is in there and then be able to ask some questions of the programs and the people that we meet with in the agencies to show us evidence of how they are reinforcing this with their training or other activity within their agencies. So again, it is a trending topic. It is something that's been bubbling up for some time and it's something that we are communicating with agencies on the best way to address, and then we are using our oversight responsibility and authority to make sure that agencies are doing that.

So that's my four trending topics. It's pretty much all I could cover in the 20 minutes I have. Probably could have added a couple more but I wanted to stop here and be able to give you some time to ask me any questions, if there are many any other topics or follow‑up on any of these topics I would be happy to stick around and answer what I can

>> ALINA M. SEMO: All right. So over to our Committee. Questions?

>> MELANIE PUSTAY: Melanie Pustay with Department of Justice. I always think it's helpful for people to know why it's a good thing to destroy records because I think there's just a gut reaction of oh, my goodness aren't we keeping everything and what do you mean people are destroying records so I think that would be a helpful thing to have you explain.

>> LAURENCE BREWER: We certainly heard that too and now there's a lot of interest in of government data. It's come up with Department of Interior schedules like why doesn't the government just keep everything, right? If you think about the staggering volume of records that be being created by agencies and the electronic records in the data centers, it really for the community that is interested in access, there is an unintended consequence there. So the most information that you have, the harder it is top find the information that you're really looking for so what we want to do is make sure that agencies are identifying this is what we do when we schedule records with agencies. Tell us the records that you think you need for your business and let's talk about how long you actually need them to cover, you know, legal reasons, statutes of limitations, business needs and let's have a conversation from an archival perspective and how long they have value and let's make sure we get rid of those because they're only going to take us space. So we're not doing what Records Management when it was originally, you know, put in

the Federal Records Act of 1950, it was about economy and efficiency. And those things are still important today. I mean yes we have the ability to keep more records but we're not being very efficient in our agencies if we are not taking Records Management and disposition seriously. So we want to make sure that we take care of that so that we can then focus on what's permanently valuable and needs to be kept for a certain amount of period so people can request information through FOIA and ensure that it's available and more easy to find, and that's really why we want to do Records Management, to promote efficiency and effectiveness in agencies, not just for the agencies but for the public who are interested in getting these records.

>> ALINA M. SEMO: All right, yep.

>> RYAN LAW: Hi Laurence, Ryan from Treasury. Question for you about Department of Interior's efforts to consolidate their schedules and I'm intrigued by this and wonder, one, do you feel this is the future of Records Management agencies? And second, could you perhaps expand on the benefits of their actions? Particularly with focusing on impacts to FOIA administration. So for example will this improve searches, will it increase the public's knowledge of what records are maintained by the agency and such.

>> LAURENCE BREWER: Thanks, Ryan. It's good to see you again. So flexible schedules and big buckets have been around for quite some time. It was part of a major records management redesign we did at the National Archives oh, god, I don't know, about 90 ‑‑ late 90s, I believe. And, you know, the reason why is for those main reasons that I talked about, you know, to promote consistent implementation of schedules, to simplify choices for the users, but I think most importantly the driving motivation at the

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time was electronic record keeping. And the more granular schedules that were around at the time were just not easily ported into the electronic environment.

So one of the things that I like to emphasize about flexible schedules, and this sort of gets to your question about access, is that if you look at what's been posted on our blog and what we've provided related to the Department of Interior schedule, there's a very detailed crosswalk that goes into the schedule. So the crosswalk is something that is required for every agency that is going to be a big bucket schedule and the crosswalk maps all of the authority so if you have 400 and you're going down to 23, the agency is required to identify what those previously approved authorities are and where they are going. So that crosswalk stays as part of the schedule. It doesn't go away. So anyone can go to our website, our records control schedules repository which we have publicly available and see well here's what interior was doing back in the 90s, here's where it is now. So that allows the users and the public who -- they may be familiar with a particular series that interior was creating back in the 90s, early 2000s. Now they can see where it is now and what the new schedule provides us an opportunity to do is relook at that authority. So flexible schedules by no means is an easier path for agencies nor is it for NARA. It requires much more work on my staff because they're not just evaluating one more schedule item, they have to evaluate all the new schedule items and what they're doing and making sure it's appropriate. So hopefully by limiting the number, making sure that the right series are going into this new bucket does provide an easier path for the requester community to find the records that they need because you're not searching 400 items, you're searching 23, and the crosswalk is there to help guide the public to what it looked like to what it is now.

>> LEE STEVEN: Hello. Lee Steven. You mentioned you're NARA's oversight responsibility and authority in terms of ensuring considering agencies are complying with their directives and their guidelines and so forth. So could you just elaborate on what you actually do to ensure I guess I'm thinking in particular where an agency is not following a directive whether from you or its own directive and you've become aware of that. What actually are the tools and methodology procedures that you follow and implement to try to change that behavior?

>> LAURENCE BREWER: So we do get this question a lot and I'm just going to say at the outset, our responsibility is one of oversight not of enforcement so none of my staff carry guns or badges. I think they would like to, but they don't. So the various activities we do in oversight have really expanded in recent years. So it really starts with reporting. So first we collect the data. We have the Records Management Self-Assessment, we have reports from the senior agency official for Records Management and we have since the directive goal of 2016 around email been requiring a maturity model for where agencies are in managing their email electrically. So our first step, here's the data, and we identify every agency in risk categories. So we can see from the self-reported data who the high risk agencies are. So that is a key trigger for us. And we can take that data and then move onto on our other over sight activities which are formal agency inspections, or a new product which is we call them Records Management Self-Assessments which are more topic based. So like for example we have done an agency assessment on the implementation of email using a Capstone approach. And for that kind of assessment we're looking at like 13 to 15 agencies at one time and trying to gather best practices and lessons learned that we can then share with other agencies.

It's different than the formal inspection where we require them to submit a plan of corrective action that we then monitor. So to get to your real question about what do we do if an agency for example doesn't comply with the plan of corrective action or doesn't make changes if they're high risk. So what we do is we report to OMB and we report to Congress so we have an annual report but we also send our annual Records Management Self-Assessment to congressional staff and we send it to the Office of Management and Budget. So we rely on them as our oversight entities to tell us what their concerns are and help us, you know, get compliance. And we have spent quite a bit of time talking with congressional staff and we have meetings with OMB and we try and highlight these things and then follow‑up directly with senior agency officials for Records Management to make sure that some of these changes are being made.

Really other than reporting up to our oversight entities, we don't have any real formal recourse in making the changes happen. We have in the past relied on IGs and agencies to sort of help us because they do carry guns and badges. So we have worked with IGs particularly at State ‑‑ and you can probably guess where that happened ‑‑ but in other agencies as well. We've had good relationships with IGs and they are more effective at really making those changes and requiring those changes to happen within the agency. So there's a lot of things that we have that we can do and that we can consider short of, you know, locking people up in the records jail in the basement of this building. But, you know, it really depends on the seriousness of the issue and, you know, we do look at, you know, the path over time. So if we see repeated, you know, year after year high risk, they bubble up to the top of the list and we'll take those issues and those agencies more seriously.

>> ALINA M. SEMO: While everyone's thinking of more questions I want to just make sure I get to the folks on the phone. Anyone on the phone have any questions for Laurence?

>> ABI MOSHEIM: This is Abi at Consumer Product Safety Commission and I had a question about the permanent record digitization. You mentioned that in early 2019 you're going to publish an NPR on the standards or something to that effect. But should agencies just wait until there's a final rule before they digitize permanent records or what should we be doing right now?

>> LAURENCE BREWER: Right. So a lot of guidance has already been issued and FAQs on our website, and I encourage you to go to records express and do a search for digitization and some of those FAQs will come up. Short answer is once we have a proposed rule, and this was the same for temporary records and it will be the same for the permanent records when it gets proposed on the Federal Register, once that proposed rule is out there, agencies can then scan and digitize against those proposed standards. They do not have to wait until the comments are adjudicated and a final rule is published. This was the guidance that we received, we got legal opinions on this and we believe that, you know, that is something that's appropriate and, you know, there's a need for agencies to be able to get to this sooner rather than later. So we were able to make that happen for a lot of agencies. Once they're proposed, they can go forward.

>> ALINA M. SEMO: So do it now. Don't wait.

>> LAURENCE BREWER: Don't throw away any permanent records yet because it hasn't been proposed.

>> BRADLEY WHITE: Hi, Bradley White, Department of Homeland Security. You mentioned earlier that 4,000 comments to proposed records schedule is incredibly high.

What is a usual number and what kind of things do people actually comment on? Is it in this case the narrowing of the categories of records? Is it whether or not something's temporary or permanent? What kinds of comments do you get?

>> LAURENCE BREWER: Right. So in the past, looking back, you know, we've been doing this process for a very long time and, you know, perhaps I was deluding myself into thinking that we were just doing a really good job, you know, appraising schedules and items on schedules because we generally typically didn't get very many comments on schedules. So we would always have a few requests for the schedules. And in a lot of cases the people who would request a schedule wouldn't submit comments. They just wanted to see it and then when we looked at the appraisal report with the schedule, they would say oh, okay this makes sense. Occasionally we get one or two, you know, three to five comments on a schedule and we're able at the work with the agency quickly and adjudicate those and move on.

So what we saw with the DOI schedule and then previously with the ICE schedule, Immigration Customs and Enforcement also that was significantly higher with comments. It's anomalous but anomalous only looking back. I can't tell you if that's going to be anomalous looking forward because as I mentioned before, we are going to be really focusing on pushing schedules, all schedules up on the website. So it's hard to say whether or not the fact that, you know, people had to email back and forth dissuaded people from requesting schedules and commenting. We'll see once it's available on the website whether or not we get more engagement that way but this is quite a change. And like I said, anomalous from where we are right now. And, you know, we will ‑‑ we'll just have to see. I think a lot of it is, you know, certainly we're aware of the environment

with which we work and I think there's a lot more attention to what government is doing now. And I have tried to spend a lot of time, you know, talking with the public, civil society groups that there's really nothing nefarious about this project – process. We are doing what we've done in the way it's supposed to work. We're supposed to solicit comments and we're supposed to adjudicate comments and work with the agencies to make sure that what we're doing is appropriate. So that won't change. I might need a lot more staff. So I don't know, if this is being recorded I'm going to say that right now so if anybody sees that, I need more staff.

>> ALINA M. SEMO: Understood. Well, Laurence, I just want to thank you. I'm eager to move on because we still have a lot on our agenda. But you said you're going to stick around?

>> LAURENCE BREWER: I will stick around.

>> ALINA M. SEMO: And folks can ask questions if you think of anything else. And Joan, I'm sorry if I cut you off.

>> JOAN KAMINER: Sorry, Joan Kaminer. I was curious if the ICE schedule was also a bucket or a Capstone approach because I'm wondering if that's –

>> LAURENCE BREWER: It's not a bucket schedule in the way of the Interior. It's much more precise, a little bit more granular and definitely at a lower aggregation and it doesn't – the interior schedule's a little bit unique in that it's department‑wide. ICE is just for ICE.

>> JOAN KAMINER: Okay.

>> ALINA M. SEMO: Thank you very much.

>> LAURENCE BREWER: Thank you.

[Applause]

>> ALINA M. SEMO: Okay, I'm eager to keep things moving. We're going to go to the next item on our agenda which are our subcommittee reports. We are going to make this a standing agenda item going forward and I just want to thank all of the subcommittee co‑chairs and members. I know there's already been a lot of activity and folks are working hard and I just want to thank you for all of that, and I'm going to pick on Ryan first, in no particular order, if we could hear from Records Management, a report out and tell us what you've been doing and tell us what's ahead.

>> RYAN LAW: Okay, great. Thank you, Alina. And on behalf of myself, the Committee, subcommittee and Jason thank you for putting together today's agenda which focused very in depth on Records Management.

>> ALINA M. SEMO: Yep.

>> RYAN LAW: We're going to be thinking about that as we meet in our next session on the subcommittee which is December 10th. So the subcommittee since our first meeting had had our first inaugural meeting where we had some brainstorming session where we talked about kind of what the focus of the subcommittee should be in Records Management. We gathered a bunch of ideas and came up with a number of questions that we should consider before our next meeting. So really at the beginning of our process and we again as I mentioned we're meeting on December 10th and to consider not only those questions that we asked at the last meeting but also the information we've gathered here today. That's where we stand now and we'll likely be meeting either biweekly or every three weeks moving forward.

>> ALINA M. SEMO: Great. I also just want to encourage anyone else on the Committee who wants to join the subcommittee, there's always an opportunity to do that.

Probably has the least amount of participants so sign up early and often. How was that for a good pitch for more volunteers?

>> RYAN LAW: Please join.

>> ALINA M. SEMO: Yeah. So thank you. Anyone else on the subcommittee want to add anything to what Ryan said? Okay. Next I'm going to ask Emily Creighton and Bradley White to report out on the Time/Volume Subcommittee, and you guys have been busy as well.

>> EMILY CREIGHTON: Thank you. I wanted to follow up on joining other subcommittee suggestion. If we knew when the times were for your next call or convening, maybe that would be a way to invite our very robust ‑‑ we have a very robust subcommittee so there may be members who would like to join that call, including myself. So Bradley White is my co‑chair, Emily Creighton, and he'll add anything that I'm skipping here or missing. So we have had a couple very substantive calls where we've discussed some of the issues that we think impact time and volume and the implementation of FOIA. So I'm sure there are many ways to frame the mandate of this subcommittee, but I think in general ‑‑ and this subcommittee is composed of almost all government members with the exception of myself and Ginger McCall, so I think it's ‑‑

>> ALINA M. SEMO: And Kevin.

>> EMILY CREIGHTON: And Kevin. What am I saying, of course, it's a good balance but maybe I just feel outnumbered. I don't know how that feels to me. But I think that it's been a good balance in that we really voiced concerns on both sides about issues that requesters see and that folks who are adjudicating the FOIA requests see and dealing with FOIA litigation see so really we're looking at how to address the challenges related to complying with the statutory mandate around replying to requests within the time frame

mandated by the statute and with the limited resources that agencies have where there are numerous conflict requests and often very voluminous. So we had a good discussion about we were brainstorming throwing out ideas and we came up with seven action items and so have really formed seven smaller committees which consist of about two to three members. And each one of those committees has a point person who is really responsible for driving the work of those smaller committees.

So I'll just briefly describe what each one of those smaller committees is tasked with at this point. And I should thank Ginger McCall who really helped guide us. She has been on this Committee in a previous term and so had some good ideas in terms of how to go about standardizing our research method.

So one of the subcommittees will be looking at tracking the progress on past recommendations and I also want to say that Kirsten has really been helpful in offering up resources and individuals who will be doing research on behalf of the subcommittee and helping us answer questions like when we talk about tracking progress and past recommendations that we will be doing that in future meetings. So we'll have the benefit of that already established process. But we'll be -- we would like for this Committee, this smaller committee to look at relevant recommendations from previous Advisory Committees from areas where we should really follow up in progress around issues that we're looking at in this Committee and establish our position for recommendations on increased resources, keeping in mind that the recommendations go to the Archivist and not to Congress as Kirsten reminds us, but we really do realize that the serious need and urgent need for resources as a part of the solution here.

The second smaller group will be looking at the issue of complex requests which we understand is really one that is particularly challenging for agencies. We'll be looking at reviewing annual FOIA reports to see the number of complex requests and that group will be thinking about how to research this issue and look more closely at this issue.

The third group will be looking at international ‑‑ will be looking at international models. So really looking to see whether there is guidance there, and we have some ideas about people to look to for guidance there and research there.

The fourth group will be looking at a list of agencies, developing a list of agencies to be surveyed based on criteria including agencies with very large back logs and those that have achieved reductions in back logs and Kirsten was helpful in pointing us to agencies that have achieved this, some reduction in back log such as U.S.C. I.S. Another group will be looking at developing a list of requesters to be surveyed based on criteria where these requesters are frequent submitters of complex requests to agencies, those that prevail in litigation and those that request large amounts of data.

Another survey for requesters will address ‑‑ so that's for requesters. So agency representatives will also ‑‑ there was a survey being developed for agency representatives that look at really the root issues of time and volume challenges at those agencies, how they treat complex requests, costs associated with the complex requests, and how regulations are interpreted to streamline responses to requests. For example, when a request is deemed reasonable or unreasonable. And where requester education is

really needed for them to understand how the process works and technology concerns and how technology is used and maximized to ease the process for different agencies.

So those were some of the areas where we think we need to look more closely and I know folks have already started the work and there have been conversations that have happened outside of the larger group meetings. I don't know if there's anything else that you would like to add or anyone else would like to add from the Committee. Okay. That's where we stand.

>> ALINA M. SEMO: Okay, great. Thank you. Anyone on the phone have any questions, comments? You guys have been very quiet today.

>> JAMES JACOBS: James Jacobs. I'm interested that you're thinking of creating surveys. I wondered if those surveys can be expanded outside of your subcommittee. There might be questions that Records Management or other subcommittees could add questions to those surveys. I think that would be really interesting.

>> EMILY CREIGHTON: Absolutely. As we develop the surveys and have drafts to share I think it would be a very good idea to share. We've talked about how we would reach out to Committee members to supplement the work, to help us with the work, so yeah.

>> ALINA M. SEMO: Okay. Anyone have any other ‑‑

>> RYAN LAW: I want to make a comment.

>> ALINA M. SEMO: Yeah, Ryan.

>> RYAN LAW: Just one comment. Ryan, sorry. And it's something the Committee should look into our perhaps OGIS should before surveying the public, it would probably be prudent to make sure that the Committee is not subject to the provisions of the

Paperwork Reduction Act which [require] prior public notice among other things before a survey is conducted.

>> Right.

>> ALINA M. SEMO: Although I heard you talk about a survey of agency.

>> EMILY CREIGHTON: We did talk about a survey of agency and that has been done by this Committee in the past but from my understanding is that they had not surveyed the requester community.

>> RYAN LAW: So any survey to the public, they're asked the same question to ten or more people requires a peer analysis. I'm not sure if FACA is specifically excluded from that.

>> ALINA M. SEMO: No. And in fact I recall from the last term of the Committee that that was an issue that sort of kind of stopped in the tracks of some of the work that was being done on one of the subcommittees. It doesn't mean we can't revisit it and ‑‑

>> KEVIN GOLDBERG: As the person I believe who is doing the ‑‑ pulling together the questions and surveys for the community, what is our recommendation then on that? I mean, how should we proceed? Not do that survey?

>> ALINA M. SEMO: I would really hate to see you not do the survey as a principle but I think we have to study a little more about how the Paperwork Reduction Act fits into all of this and what hurdles we have to go through.

>> EMILY CREIGHTON: Yeah. I agree, Kevin, that we should research that immediately. I mean during my time in the [USCIS] Ombudsman's office which had a public-facing facet we also dealt with this issue but there are certainly ways to address it. It is not ‑‑ I don't think it should make us stop in our tracks for sure.

>> KEVIN GOLDBERG: I was thinking still work the list of questions out and if we don't end up.

(several people talking at the same time).

>> RYAN LAW: One of the many hats I wear at Treasury is oversight of PRA so I asked my team that question and encourage OGIS to.

>> ALINA M. SEMO: We're going to check with our counsel.

>> EMILY CREIGHTON: Thank you for raising that, Ryan.

>> ALINA M. SEMO: Yep. Okay. Anything else on Time/Volume? That was a great report. Thank you, Emily. Can I turn to the Vision Subcommittee report from Joan Kaminer and Chris Knox? I'm assuming, Joan, you're going to give the report or is Chris?

>> JOAN KAMINER: Chris is on the line but I'm going to give the report out. So we had some ‑‑ we've had two meetings for the Vision Subcommittee but some concerns up front that we wanted to ensure that this subcommittee didn't become a, you know, kitchen sink committee, that we had a defined mission statement. So our first meeting focused on drafting and brainstorming about that mission statement. So each of you will find in your packets the Vision Subcommittee's mission statement. And on the screen. Great, thank you. So I'm not going to read the whole thing for you. Take your time. If you have any comments, suggestions, want to discuss how we got to this mission statement, you know, talk to anybody on the subcommittee, Chris and I, but I do want to highlight the discussion at our second meeting which was what areas we were going to focus on our data collection efforts.

And the decision was made that we would take the mission statement and with the five identified subparts of that mission statement and have those be essentially our mini ‑‑ our sub‑subcommittee. So I am going to read those just because they are the identified areas that we're going to collect information on.

Raising the priority of FOIA within the Executive Branch, reconsidering the model of the Office of Government Information Services within the FOIA community, increasing accountability for FOIA and transparency, managing expectations between agencies and the requester community, and the fifth, stressing the need for increased and continued financial support for agency FOIA programs.

I would like to ask kind of an outstanding question for the whole Committee if you have comments, I don't know if we have time to take them now or if you would like to just circle with us later. But we did have a question on the time frame of our recommendations for the Vision Subcommittee. Currently in our mission statement we have had as a strategic plan for ten years out. There was a lot of discussion of whether or not this was necessary at all or if it was too short or too long of a time frame. So if you have any input on how you see ‑‑ because I do think it matters where the time frame that we're looking at to because it would dramatically alter what our recommendations would be. We could certainly achieve different things if we're looking 20 years out but that's certainly I think would make the likelihood of being able to track and ensure those recommendations are implemented much harder. So, you know, either now or later, Chris or I or anybody else on the Committee we would like to take your comments on that.

>> ALINA M. SEMO: Does anyone have any thoughts on that in terms of time frame? And I want to invite Patricia Weth who is hopefully on the phone who was advocating for longer time frame or no time frame at all.

>> PATRICIA WETH: Hi, this is Patricia Weth. I was advocating for no time frame at all, just leaving it open ended or the other alternative is to limit is to the subcommittee's term which is a 2‑year period. And I think some of my colleagues on the Committee differed with me and they thought perhaps it should be longer than ten years. And I'll let them speak to that.

>> ALINA M. SEMO: Any ‑‑ thank you, Patricia. Any other reactions, thoughts? Ryan, sorry.

>> RYAN LAW: Ryan, I was just going to comment that agency strategic plans are generally 5‑year increments so Treasury just completed its 5‑year strategic plan in January. We run five years and then again it's updated so I think it might be prudent to look at that as an example, the way I think about using a vision statement like this is ensuring that it's incorporated into agency strategic plans or in planning.

>> ALINA M. SEMO: Uh‑huh.

>> RYAN LAW: So since those are updated every five years it might make sense to look at that as a standard. Certainly I don't feel strongly.

>> ALINA M. SEMO: Good idea.

>> ALINA M. SEMO: Yeah.

>> LEE STEVEN: Lee Steven. I don't feel strongly either. I think five years is probably a very workable time period. But just to throw out support for the ten years, if you look at the FOIA amendments since original enactment of FOIA there's been an amendment just about every ten years.

>> ALINA M. SEMO: Ten years.

>> LEE STEVEN: Ten years or it's been two years since the last one, eight years. So that time frame actually makes sense to me given that but I do recognize five years is probably a more workable time frame in terms of actually getting something ‑‑ with follow‑up something to look at I just wanted to throw that out.

>> JOAN: This is Joan again. Very good points. So at our next meeting which we don't have a schedule and time and date at the moment but I want to discuss that and finalize what the time frame would be. Thank you.

>> ALINA M. SEMO: Okay, great. Thank you so much. And you'll report out at the next meeting?

>> JOAN KAMINER: Yes.

>> ALINA M. SEMO: Okay, great. Thank you.

>> LEE STEVEN: I just have one question. This is Lee Steven again. When you were on the five elements there, reconsidering the model of OGIS, could you just elaborate on that?

>> JOAN KAMINER: Sure. This is Joan again. And if anybody from the Committee also wants to give their take on that. We under ‑‑ we heard a lot about OGIS' process during the subcommittee meeting, you know, I think it was really helpful to understand both the work load that they're under as well as their responsibilities and we think that we could potentially make some recommendations towards either strengthening OGIS' ability to pursue those responsibilities or other ways to emphasize OGIS' role in the FOIA process. So nothing defined at the moment but we think that it's an area that we should look into and can I mention ‑‑ or I don't know if you guys want to mention that in a future meeting ‑‑ so it was presented that at a future Committee meeting OGIS could

make a presentation on their work flows, their responsibilities, what they're working on

and also like potential limitations. Because even as somebody who has been familiar

with OGIS throughout my career, I was not even ‑‑ I had not known the extent of what

you guys do or how it actually works within OGIS. So I think that's going to be a useful

presentation.

>> MELANIE PUSTAY: I was just ‑‑

>> Hi, this is (audio cutting out).

>> MELANIE PUSTAY: There's a nice symmetry between the 5‑year strategic plan and

ten years which is really like just two strategic plans put together so in some ways the ten

is kind of nice that way because it would be two strategic plans out. I just remembered

when we were first doing ‑‑ coming up with the three subcommittees, vision as I

remember our discussion, we were really thinking about like if we were starting today,

how would we do FOIA. So as I remember the discussion, it was much more really big

sky like how would we sort of start afresh which makes me think a little bit longer time

frame is better.

>> KEVIN GOLDBERG: Actually, this is Kevin. I wasn't going to come back to that

but I have a similar thought in that I assume the agency strategic plans are staggered as

well. So some of them might like be coming up next year and there would be no way to

implement this so in fact you would have to be looking at almost in a longer than five

year time frame for any implementation so it seems like ten probably makes sense for

that reason as well.

>> JOAN KAMINER: Sorry, Joan again. I'm sorry to take up so much time but from

what Melanie was saying, I also want to emphasize, I know that with these five different

areas of our subcommittee, there is overlap with the other subcommittees. And I think

even between all three of our subcommittees, you see some overlap. But in particular with the Vision Subcommittee it is that big picture of what we see FOIA. So to the extent that, you know, managing expectations is going to play into the time and volume subcommittee, we will be taking a different perspective than maybe immediate recommendations that could be implemented.

>> ALINA M. SEMO: Okay. Did I hear someone on the phone?

>> PATRICIA WETH: Oh, yes. It's Patricia Weth. I could ‑‑ I think I'm in the minority here about no time period on the vision statement, and I'm, you know, happy to stand down on that. But also I just wanted to follow up about having OGIS present at one of the ‑‑ and perhaps it could be at our next meeting to kind of, you know, assist us in that area of, you know, kind of widening their ‑‑ their work with FOIA. Is that something that we could schedule now or do we need to talk about that amongst our Committee?

>> ALINA M. SEMO: So this is Alina. I did offer to the subcommittee to do a separate faster presentation. Our next meeting is not until March of 2019 which is hard to believe we're almost in 2019. So I offered both just to help facilitate the dialogue within the Vision Subcommittee. I'm happy to do both. The important thing is I just want to make sure that I have a job after we're done. So ‑‑ and I want to speak on behalf of the rest of my staff too. So on that note I want to keep moving and actually invite another wonderful OGIS staff member, our newer Deputy Director, Martha Murphy who has actually been wonderfully gracious to keep on the task of keeping track of monitoring where we are with the recommendations of the past two terms of the FOIA Advisory Committee and she is going to talk about that today, field any questions so there is a PowerPoint that goes with this, it has colors it is very pretty.

>> MARTHA MURPHY: Pretty pictures. Okay. Okey doke. I'll try to make this quick because I know we're all getting hungry but I'm happy to answer any questions that I can. The first recommendation dealt with best practices and directed OGIS to promote the identified best practices from the previous Committee. We have been actively doing this. We hosted a panel at the 2018 OGIS Annual Open Meeting. We presented at two ASAP functions, a brown bag lunch and at the 2018 National Training Conference. We presented at the October 2018 Chief FOIA Officers Council meeting. We also incorporated these best practices in questions into the next Records Management Self-Assessment and we have incorporated the best practices into OGIS' dispute resolution training which we is ongoing. So we won't forget about this. We'll continue to incorporate it in anything that we possibly can. We can move on.

Recommendation number one, propose that the Chief FOIA Officers Council seek to establish a technology subcommittee. I'm pleased to announce that that has occurred. There is a technology subcommittee that has been established. They will have their first formal meeting coming up in early December but they've already met with Melanie and Alina and had some conversations via email. Tentatively their three goals are to study -- goals are to study utilization of deployment technology and to create a catalog of who's doing what, what are the agencies using. Then from that they hope to highlight best practices and then finally work with the CIO Council to make recommendations. So we're moving along there. Recommendation number two is complete. The 2019 Chief FOIA Officers Report will include the answer to the following question, which I'm not going to read aloud to you, but it's up there and we'll be reporting out on that.

>> ALINA M. SEMO: Thank you, Melanie.

>> MARTHA MURPHY: Next slide. Recommendation number three. Suggest a

modification to the Federal Acquisition Regulation which is referred to as the FAR to

require all agencies when acquiring electronic records to consider FOIA needs in the

acquisitions. Initially we had thought that a letter from the Archivist to the FAR Council

was the way we wanted to go but we've actually been meeting with NARA's FAR

Council representative and she's clarified that the best way to move forward is to draft a

business case that we then submit to the FAR so we're working on that now and hope to

have a draft business case to the FAR by the spring of 2019.

Recommendation number four talks about launching an interagency effort to develop

standard requirements for FOIA processing tools and to ensure that both the tools and

their outputs are Section 508 compliant. We are considering that in this situation, it is

likely that recommendations number one and number three are going to cover some of

the goals from this recommendation but we really would like to discuss with the wider --

the Committee where the gaps might be in that and I'll be honest we're sort of struggling a

little bit on how to move forward on this because we do think it's somewhat going to be

covered by other recommendations. One idea that we do have is to have an industry day

at some point in time. But before you can do an industry day and bring in folks, you need

to know what requirements you're looking for. So we will likely be reaching out to the

Committee on this one.

Recommendation number five, request that OGIS conduct an assessment on the methods

undertaken by agencies to prepare documents for posting. We're going to be addressing

this through OGIS' compliance team which is currently a compliance team of one. So

hopefully we will have another staff member coming on board in fiscal year 2019 and our goal right now is to launch this compliance report in the fourth quarter of 2019.

Recommendation number six. Encourage OGIS to highlight the issues of proactive disclosure and Section 508 compliance in its report to Congress. OGIS will include this information in our 2019 annual report on fiscal year 2018. And we usually try to publish that annual report around Sunshine Week in March so that is our goal, second quarter of 2019.

Recommendation seven. Again we're directing OGIS to examine the use of appropriate performance standards in federal employee appraisal records and work plans to ensure compliance with the requirements of the FOIA. Again this will be addressed by our OGIS compliance team once we have staff available and our goal right now is to launch that effort in the beginning of fiscal year 2020. That is an area that's kind of near and dear to my heart. It's something that I did incorporate in my previous role as a FOIA supervisor and I think it's ‑‑ we'll be working hard on that.

Okey doke. That's the whole thing. Does anyone have any questions about the recommendations?

>> JOAN KAMINER: Does anyone know, is *FOIAonline* 508 compliant?
>> MELANIE PUSTAY: Yeah, I'm sure it is. I'm sure it is.
>> JOAN KAMINER: I was just curious.
>> MELANIE PUSTAY: Yeah, no, I'm sure it is.

>> ALINA M. SEMO: So I think I actually know the answer to that. It's only partially

508 compliant is what folks have told us. But your home agency is the one that sponsors

FOIA online so I would check with them and ask.

>> JOAN KAMINER: Someone else in my agency by the way

>> ALINA M. SEMO: Absolutely. I do know this issue had come up as an agency at

NARA which when I was still in the General Counsel's Office because we actually

thought little elves worked in the middle of night to make these documents 508 compliant

before we posted anything on line. I'm not being facetious, I'm serious but there are no

elves making shoes, or these documents 508 compliant so that's why I'm saying only

partially because I think really incumbent upon each agency as they process and get ready

to post the documents to make them 508 compliant.

>> ALINA M. SEMO: So as Melanie knows and others who were on the Committee in

the past, the 508 issue has been one that we continue to struggle with and so, you know,

it's back to recommendation five I believe we definitely want to invite Committee help

and ideas about how to move forward but it's definitely an issue that's vexing a lot of

agencies.

>> MELANIE PUSTAY: Melanie again. When I was answering your question, there's a

distinction between the sort of the public facing pieces of *FOIAonline*, which I'm sure

would be 508 compliant, and the issue that Alina is addressing which is actually really

the heart of it which is are the documents that agencies release under the FOIA, through

FOIA online, 508 compliant online which is a different question altogether.

>> ALINA M. SEMO: Yep. By the way, if you find out can you let us know at the next

Committee meeting? That would really be helpful.

>> JOAN KAMINER: I'll report back.

>> EMILY CREIGHTON: I have one question.

>> ALINA M. SEMO: Can you state your name?

>> EMILY CREIGHTON: Emily Creighton. For recommendation four, talking about launching the interagency effort to develop standard requirements for FOIA processing tools, you talked about ‑‑ could you just sort of walk us through again what the plan is there and you mentioned the industry day, I'm not sure what I know what an industry day is.

>> MARTHA MURPHY: So an industry day is when you come up with the requirements that you're looking for, for technology and my understanding and Alina, please jump in if you know more than I do on this, those requirements kind of go out to ‑‑ there's a term for it. It's a request for an RF something ‑‑

>> Oh, information?

>> RFI?

>> Request for proposal.

>> MARTHA MURPHY: Request for proposal, RFP, and then they sort of invite contractors to come in one place at one time and show their wares, basically. So all of the agencies would be present. It would be ‑‑ it's public. It's a public event. Anyone can attend is my understanding.

>> ALINA M. SEMO: So over here we think it's an RFI.

>> MARTHA MURPHY: Okay.

>> ALINA M. SEMO: A request for information. And I can tell you Emily us, we, OGIS, had some preliminary discussions with folks at GSA who are actually already working with Laurence's office in the CRO's office, they're actually interested in similar issues and the process by which they went through and got GSA help is something that

we were also looking into in order to, you know, to start this process down the road. But we just weren't sure if that was actually going to do the trick. We're really -- or really address the delta that is going on here so that's why I think we're a little more hesitant on this recommendation.

>> MARTHA MURPHY: I think the challenge is to really identify what are the requirements that we need. And I think this is our challenge as well with the FAR business case. I mean I think we can all say that we want sufficient search and the ability to export potentially. The question of whether you get into redaction technology is something separate. That may be a separate technology that's not needed to be built into every electronic system but certainly search and potentially export would be. What else is there? So I think that that's what we're looking for is a little bit of guidance from the Committee or perhaps a way forward to try to determine that. What are those things that we're actually looking for.

>> ALINA M. SEMO: Thank you.

>> ALINA M. SEMO: I'm looking meaningfully at Tom who I know was very active in the last Committee about section 508 issues. So if you have any thoughts. I don't mean to put you on the spot. You can --

>> THOMAS SUSMAN: No, I was actually waiting for the next update and that is the progress report on the first recommendation of the first Advisory Committee which is your bailiwick but it seems we have at least a responsibility to ask that question.

>> ALINA M. SEMO: SURE. That's fair. And we are moving that along. I actually just yesterday if I can share that publicly, shared with Melanie an updated draft. We have put together, and Sheela Portonovo, our attorney advisor, has actually worked very hard on this with our summer law clerk to put together a red line version that we circulated we

wanted OIP look at and then proceed to OMB so my goal was to keep this moving and get this to them before the holidays.

>> MARTHA MURPHY: Can you summarize.

>> ALINA M. SEMO: The recommendation of the first subcommittee we actually consider it complete. It was -- the recommendation to the Archivist to make a recommendation to OMB that they update and revise their 1987 antiquated FOIA fee guideline. And we did that very promptly after the Committee was terminated but I think what we're talking about now is the actual content of the guideline itself and that's what we've been working on.

>>THOMAS SUSMAN: Yeah. If I can -- I mean some of the recommendations from last year which say agencies should, you know, we recommended you can say well we completed our work because we made the recommendation. But I think our interest is in implementation. Actually at the working level.

>> Actually at the working level.

>> ALINA M. SEMO: Yeah.

>> MARTHA MURPHY: Which is I think why we're taking the next step to try to make it easier for them, right?

>> THOMAS SUSMAN: Correct, correct. Thank you.

>> ALINA M. SEMO: Yep. All right. Okay. Any other comments or questions or thoughts from our Committee members before we move onto public comments? Any folks on the phone want to say anything before we move on? Okay. Going once, going twice. I think that's it.

Okay, so this is our opportunity at the end of the meeting to invite anyone from members of the public to provide the Committee with comments, questions, et cetera. So we will ask folks who are interested in asking any questions to step up to the microphone that's located on my left, I guess the right side of the room, so you could please state your name and affiliation, that would be great. And come on up.

>> ALEX HOWARD: Hello. Alex Howard. Nice to see some of you again. Sorry I was a little bit late. There was some breaking news in other parts of the justice system that I was watching.

I was curious about the status of what you've all seen with FOIA.gov. I've missed the last meeting as well, and I'm wondering if you've seen a change in the public's use of FOIA or in your agencies or if you've discussed the impact of its integration. And specifically with respect to the Department of Justice if you've seen agencies setting up any APIs to use, since I hadn't seen the updates on your websites or in the press about it. Thank you.

>> MELANIE PUSTAY: Sure. The agency ⁻⁻ there has been some progress made on ⁻⁻ in terms of API interoperability with the portal but nothing is launched quite yet but I can at least report that we are aware of progress being made. The next step in the process is there's going to be a memo from OMB and DOJ giving deadlines for agencies to establish their API interoperability. And so that's ⁻⁻ that would be next thing that you'll look for.

>> ALEX HOWARD: Thank you.

>> MELANIE PUSTAY: Sure.

>> ALINA M. SEMO: Sheela, do we have any comments from folks on live stream?

>> SHEELA PORTONOVO: We've had some interest in NARA itself and its role in the digitization process that was spoken about earlier, but there are no questions or comments directed to the Committee at this time.

>> ALINA M. SEMO: Okay. We must be doing a great job. All right, anyone else out there want to ask any questions? Going once, going twice. All right. Does anyone else have any questions or comments or concerns that they want to talk about before we adjourn? Okay. Kirsten would like for me to remind everyone to please return your folders because we are running low so we are going to recycle them for the next time.

And I want to remind everyone to visit our website and our social media for more information about our activities and how you can participate. Our next meeting is going to be Wednesday, March 20th, so it's a Wednesday, not a Thursday, it's when we could get the McGowan Theater, 10:00 a.m., it's going to follow right after Sunshine Week. We hope you will join us for our celebration of Sunshine Week. We're also going to celebrate OGIS' tenth anniversary on Monday, March 11th, 2019, it's going to be in afternoon. In the morning, please go to DOJ, for Melanie's Sunshine week celebration. Yes, and we're going to be here in the afternoon starting at 1:00 in the McGowan Theater. Thank you again for all the Committee members for your participation and keep up all the great work. And if there are no questions or concerns, we stand adjourned.

>> Thank you.

>> Thank you.
[End of meeting]