

**National Archives and Records Administration (NARA)
Freedom of Information Act (FOIA) Advisory Committee Meeting**

Meeting Minutes – October 25, 2016

The FOIA Advisory Committee convened at 10 a.m. on Tuesday October 25, 2016 in the Archivist's Reception Room at the National Archives Building, 700 Pennsylvania Avenue, N.W., Washington, D.C. 20408-0001.

In accordance with the provisions of Public Law 92-463, the meeting was open to the public from 10 a.m. to 1 p.m.

Meeting materials are available on the Committee's website at <https://ogis.archives.gov/foia-advisory-Committee/2016-2018-term/Meetings.htm>

Committee members present in the Archivist Reception Room:

- Nikki Gramian, Acting Chair, National Archives and Records Administration
- William Holzerland, Food and Drug Administration
- Chris Knox, Deloitte
- David Pritzker, Administrative Conference of the United States
- Ginger McCall, Department of Labor
- James Valvo, Cause of Action
- James Hershberg, George Washington University
- Logan Perel, Department of Homeland Security
- Melanie A. Pustay, U.S. Department of Justice
- Michael Bekesha, Judicial Watch
- Mitra Ebadolahi, American Civil Liberties Union
- Nate Jones, National Security Archive
- Raynell Lazier, Consumer Financial Protection Bureau
- Sean Moulton, Project on Government Oversight
- Stephanie Carr, Department of Defense
- Thomas Susman, American Bar Association

Committee members on the phone:

- Jill Eggleston, U.S. Citizenship and Immigration Services
- Margaret Kwoka, University of Denver, Sturm College of Law

Committee members absent from the meeting:

- Helen Foster, Department of Housing and Urban Development
- Lynn Walsh, Society for Professional Journalists/ NBC7

Others present or participating in the meeting:

- David Capozzi, U.S. Access Board
- Helen Chamberlain, General Services Administration
- Timothy Creagan, U.S. Access Board
- Kate Russ, NARA, Committee Designated Federal Officer

Introductions and Announcements

Acting Committee Chair Nikki Gramian opened the meeting and introduced the Archivist of the United States (AOTUS) David Ferriero who offered opening remarks. Mr. Ferriero explained the importance of the Committee's work and tied the Committee's mission to the President's call to make Government more transparent, collaborative, and participatory. Mr. Ferriero explained the actions the National Archives plans to take to achieve these goals, which are outlined in the National Archives' fourth Open Government Plan. The National Archives' fourth Plan includes 50 new commitments and was published on Github, which allows the public to give the National Archives targeted feedback. Mr. Ferriero then welcomed the newest Committee member, Dr. James Hershberg from the George Washington University. Mr. Ferriero discussed Dr. Hershberg's work as a historian and his current projects. Lastly, Mr. Ferriero informed the Committee members that he sent the previous Committee's recommendation to the Director of the Office of Management and Budget (OMB). He noted that he is looking forward to what the current Committee accomplishes.

Ms. Gramian thanked Mr. Ferriero and also welcomed Dr. Hershberg. Ms. Gramian provided background information about the Committee and its work. The Committee spent the next few minutes introducing themselves and their affiliations. Committee members Helen Foster and Lynn Walsh were unable to attend or participate in the meeting.

Administration

Ms. Gramian provided information on how to stay informed about the Committee's work through the Committee's website, as well as through the Office of Government Information Services' blog and Twitter account, and outlined the meeting agenda.

Ms. Gramian directed the Committee's attention to the July 21, 2016 meeting minutes. The Committee voted to adopt the minutes.

Ms. Gramian noted that in the first meeting of the Committee's term there was discussion about Section 508 compliance. Ms. Gramian thanked Ms. Pustay for organizing the meeting's

speakers, she then introduced the three speakers, Helen Chamberlain, Government-wide Section 508 Training and Outreach Director from the General Services Administration (GSA); David Capozzi, the Executive Director from the U.S. Access Board; and Timothy Creagan, Senior Accessibility Specialist also from the U.S. Access Board.

Section 508 Presentations

Mr. Capozzi gave an overview of Section 508 of the Rehabilitation Act and explained that the U.S. Access Board sets standards, which are incorporated in the Federal Acquisition Regulation (FAR). He explained that Section 508 was intended to be a procurement vehicle for making technology accessible for people with disabilities (Federal employees and users of agencies' services). It was not intended to be an accommodation law or regulation. Mr. Capozzi used the example of a curb ramp that assists people getting into a building, Section 508 is a ramp into technology. When the Federal Government buys technology, that technology is already accessible. Mr. Capozzi noted that the current standards are being updated and the final rule is with the Office of Management and Budget (OMB) for interagency review. Both the U.S. Access Board and the GSA provide technical assistance to agencies. GSA provides technical assistance regarding procurement. The agencies also created bi-monthly webinars, for which trainees can earn continuing education credits.

Mr. Capozzi stated that after the law was passed in 1998, a group of Federal agencies was formed that had interest and expertise in accessibility, primarily to coordinate technical assistance and answers to questions regarding Section 508. The group, which is called the Accessibility Community of Practice, has its home in the Chief Information Officers' Council (CIOC). The CIOC is the principal interagency forum on Federal agency practices for IT management. The mission of the CIOC is to improve practices related to the design, acquisition, development, modernization, use, sharing, and performance of Federal Government information resources.

He then gave the Committee members an overview of the organization structure of the Federal CIOC Accessibility Community of Practice and its scope of practice, which includes: discussion of cross-agency issues regarding Section 508 implementation; providing resources such as training curricula; engaging disability advocacy groups, industry, and academia; and increasing awareness of Section 508 law and regulations. The community of practice has three sub-Committees—vendor/acquisition outreach, education, and best practices. The Accessibility Community of Practice represents a cross section of agencies and is co-chaired by individuals from the Department of Veterans Affairs and the Department of Transportation. Timothy Creagan discussed what documents are covered under 508's definition of electronic and information technology (EIT). Mr. Creagan told the members that his presentation was a high-level view, but the regulations have all the technical standards. He noted that the technical requirements can be found on the U.S. Access Board's website. He also explained that each agency is responsible for enforcing 508 compliance and their own implementation of the law. The U.S. Access Board provides guidance and GSA provides technical assistance. U.S. Access Board is not a judicial body for adjudication of Section 508 compliance. Mr. Creagan defined EIT and explained that portable document format (pdf) files meet the standard of EIT, and must meet Access Board standards. He directed attendees to the best practices section of

Section508.gov, which includes current guidance on making documents 508 compliant. He also explained the Web Content Accessibility Guideline (WebCAG) guidance document and where the document is hosted on the website.

Mr. Creagan explained that there are a variety of barriers to information and then reviewed with the Committee basic authoring and testing for Microsoft Word 2013. Section 508 guidance covers document formatting, text formatting, object formatting, color formatting, and miscellaneous. Mr. Creagan reviewed guidance on using styles to create headings, duplicating vital information in headers, footers, and watermarks. He explained that screen readers tend not to read headers and footers and encouraged Committee members to try the built in screen reader. Mr. Creagan then reviewed basic testing for PDF documents, which includes 6 categories—preconditions, document properties, structure tags, objects, color, and miscellaneous. He reviewed the benefits of tagging a document to enable a screen reader to find markers on pages in order to navigate the page. Mr. Creagan discussed the intersection of 508 and FOIA, and how screen readers can read redactions and FOIA exemptions listed within the redaction.

Helen Chamberlain discussed remediation of documents. She explained that remediation of a document is not as scary as it sounds, that most software has accessibility tools built into them. Users can run accessibility reports which indicate what needs to be changed or fixed and instructions on how to fix it.

Ms. Chamberlain noted that her office, the Office of Government-wide Policy, IT Accessibility and Workforce Division, at GSA does a lot with procurement and training. While she mentioned that technology is advancing, with such capabilities as optical character recognition (OCR), accessibility capabilities are still in a growing stage. She explained that if there is an undue burden on the agency, you have to justify it to the agency. The agency is still responsible for providing an alternative means for accessibility, for example having an employee read documents to a blind person. She explained that with the new proposed final rule, GSA and the U.S. Access Board are working on redoing their training. She mentioned that GSA relies on information from customers/agencies to improve the program. She encouraged Committee members to contact her office if they notice any gaps in training. She noted that related to Mr. Creagan's advice that Committee members try screen readers, the program JAWS has a 30 day free trial period.

Committee Discussion of Section 508

Ms. Gramian thanked the speakers and opened the floor to discussion about the topic.

Dr. Hershberg asked the speakers what the approach is for Section 508 compliance for historical documents. He asked if there was a process that is less labor intensive, which would allow agencies to get historical documents on the web faster.

Ms. Chamberlain responded that if it was absolutely necessary to put something online that is not accessible, the agency needs to provide a disclaimer that the document is not accessible and provide contact information for the agency.

Mr. Creagan added that this was an issue of interpretation. He provided an example of making an X-ray accessible, X-rays are inherently visual. Does the person need to know that it is just an X-ray, or do they need to know what the X-ray says (i.e. left distal fracture of a radius)? He noted that it is up to the discretion of the agency to decide, and that the agency's policy about the review of the documents can help inform how to make documents accessible. In order to explain a visual element to someone, you must know what their need is. 508 does not give specific guidance.

Mr. Susman noted that there are two issues with 508 compliance in FOIA circles and the Committee. First, the requirement for proactive disclosure and second, the DOJ's policy regarding release to one/release to all, both of which require agencies to put a large quantity of documents on the web. Often requesters are told that 508 compliance stands in the way, that it is an obstacle due to the burdens, the cost, the technology, and manpower. He noted that the speakers said two things—either there is a technology that can do it, or if it is too great of a burden, the agency can go ahead with a disclaimer. He noted that he hears from agencies that 508 is the reason they cannot get records on their websites.

Ms. Gramian mentioned that it is the FOIA units that are doing the work of making documents 508 compliant.

Mr. Creagan explained that in the context of 508, when agencies procure technology it must be accessible to employees, and anything that interacts with the public must be accessible as well, i.e. websites. If the information is important enough to be on a website, it needs to be accessible. While agencies may claim undue burden, it is based on case law. Agencies may post things that are inaccessible if there is undue burden, or making a document accessible would fundamentally alter the document. Mr. Creagan gave the example of giving a deaf person a spelling test—a teacher can't caption a spelling test, because that defeats the point. He said agencies can use technologies like OCR to assist, but there still needs to be a review of tables and images, and gave the example of wheat production tables from the 1940s. Agencies must provide the disclaimer if something is not accessible and provide a contact person. He suggested that there are several agencies successfully doing 508 compliance, such as Housing and Urban Development (HUD). Mr. Creagan suggested that management needs to be involved in 508 compliance and make it an initiative which starts from the top down. He gave the example of how IRS deals with tax return documents, which they receive both electronically and in paper form—sometimes even on tissue paper. Agencies have to extract the data and present it in a meaningful way.

Ms. Chamberlain added that each Federal agency has a 508 coordinator or manager who members can contact. She also noted that each agency does business differently and therefore 508 differently.

Ms. Pustay asked Mr. Capozzi to explain his curb analogy.

Mr. Capozzi said that 508 is not remediation, the intent was to make Government technology accessible out of the box. He explained that in the example of the ramp, you build it before it is even needed.

Mr. Jones said he recently attended a FOIA training where there was a booth for vendors. One of the vendors advertised a "508 solution." When he asked the vendor what the solution was, they said the company would have an employee do a page-by-page remediation for a fee. He asked the speakers when is it appropriate for agencies to claim undue burden or provide a disclaimer. He noted there are great agency websites that have primary sources which aren't 508 compliant. He hoped that records wouldn't have to be taken down or that the pace of documents being released by agencies should not be stopped because of 508 compliance requirements.

Mr. Creagan asked the Committee to consider, if something is posted online but is not accessible, what is the point? He explained that 508 provides a minimum level of access, and noted that the visually impaired cannot use information on the web which is not accessible. He suggested that if materials that are too fragile to scan, you can take a picture of them, and post online with a description and an accessibility disclaimer. He also gave the example of a mobile phone which has built in volume control: 508 would ensure that there is reduced squeal between a mobile phone and a hearing aid.

Mr. Capozzi mentioned that U.S. Access Board and the Department of Justice are working together to review policy.

Mr. Jones asked of the millions of pages posted on Government websites which are not 508 compliant, is the policy that they should be removed?

Mr. Creagan answered that if an inaccessible document is on a website it needs to be taken down.

Dr. Hershberg said he strongly objected to that policy, that it is a balancing act.

Ms. Chamberlain stated that agencies do not have to pull the documents off a website, if people can't use them. But agencies still have the responsibility for 508, and gave the example of reading documents to someone.

Ms. Pustay recommended that the Committee focus the discussion on real life agency examples, such as standard agency documents, emails, and day-to-day records.

Ms. Chamberlain followed up her previous comment stating that agencies still have to justify why they are not making documents accessible, or technology accessible, to cover the agency from a lawsuit.

Ms. Pustay asked doesn't 508 fundamentally require agencies to make things accessible when they post them on their websites? That's the bottom line.

Mr. Capozzi noted that the requirement for websites to be accessible has been in effect for 16 years.

Ms. Chamberlain confirmed, yes, that is the law. There are a lot of exceptions, which are case-by-case. She explained that when agencies are creating documents from the beginning, they need to be accessible, if you have documents that were already created, then you have to try to make them accessible. If you can't, you are responsible for providing that link to a person or a mailbox to get that information.

Mr. Moulton noted that often agencies are dealing with high volumes of records, but they still want to post them. He asked if agencies provided alternative access—such as a link to get someone to read the documents to them—would that count as 508 compliant?

Ms. Chamberlain stated that the agency's first responsibility is to make it accessible if at all possible, but if agencies are absolutely unable to make it accessible, they must provide a disclaimer. The bottom line is that people want access to information, and it's the Government's responsibility to provide that information in whatever form that is plausible for the agency.

Mr. Moulton posed the question, if it is already an internal requirement for agencies for their own employees, then why are documents still inaccessible when they reach the FOIA office?

Mr. Holzerland thanked the speakers and noted that the 508 compliance needs to be baked in from the beginning, then agencies can work on one-off issues. For example, FDA receives requests for large volumes of records which often come from program offices locked or password protected.

Mr. Perel added that FOIA requires agencies to produce records, but 508 would require the FOIA office to modify the documents, which under FOIA agencies aren't required to do. He also noted that his agency has classified information which is not open to the public, and then they have to switch computers and networks which creates a lot of issues. He said he believes these two issues are in contention with each other—make available what agencies have in the format that allows for redactions, or make it available to everyone in any possible way they can see it. Most agencies don't create documents with 508 in mind. He noted that the DHS FOIA office receives millions of pages which aren't accessible and that there are resource barriers to making them accessible.

Mr. Capozzi noted that DHS has a great 508 program and is one of the leaders in 508 accessibility. He stated though the requirement for website accessibility has been in place since 2000, document accessibility is a newer area of focus. He stated that the new standards (the ones at OMB for interagency review) will have more instructions on the "how" and "why" of 508. He noted that there are now more resources, such as Adobe accessibility checker.

Ms. Gramian asked, if the FOIA offices received documents from program offices which are inaccessible, do they have to send them back?

Mr. Creagan said that the agency has to balance their FOIA responsibilities through the prism of 508 compliance. He said that examples of agencies leading the way in 508 compliance are HUD, the Department of Homeland Security and the Social Security Administration.

Ms. Pustay thanked the speakers.

Ms. Gramian asked the speakers if the Committee could post their PowerPoint presentation online.

Mr. Moulton asked if instead of agencies posting documents online, could agencies post an index of documents, which would be accessible?

Mr. Capozzi said as long as the index was accessible, he didn't think that was an issue.

Dr. Hershberg noted that availability of documents to the general public is very important, the purpose of FOIA was to make available as much as possible, as quickly as possible, to the maximum audience. 508 shouldn't be an excuse used to delay release of material. He noted that historians are still waiting for documents that are over 50 years old. He stated that there is no reason for material that cannot be put online while a good faith effort is being made to make it accessible.

Mr. Capozzi noted that the Committee seems to need to discuss this among themselves regarding the FOIA issues. They provided them information on how to make documents accessible.

Mr. Susman asked Ms. Pustay what policy Mr. Capozzi mentioned that the DOJ and U.S. Access Board were working on.

Ms. Pustay said the DOJ was working with the U.S. Access Board on the Release to One, Release to All policy.

Ms. Gramian made a few announcements, then stopped the meeting for a 10 minute break.

Break 11:25 a.m.

Establishment of Sub-Committees

Ms. Gramian resumed the meeting by recapping the July 21, 2016, brainstorming session and the themes and topics which emerged during that session. Ms. Gramian directed the members' attention to the meeting minutes from the previous meeting (attachment 1 and 5) which outlined the list of topics and read the topics for the benefit of the viewing audience. The five main topics were Commitment and Awareness, Delays, Volume (electronic records), Funding, and Technology. One of the issues the Committee identified as a topic to review for the next two years was 508 compliance. It was also suggested that the Committee continue the work from the last Committee's term on proactive disclosure. Another suggestion was setting up ad hoc Committees on particular agencies and there was discussion on keeping pace with technology (volume, search, database management/tracking, producing records electronically). Commitment and Awareness dealt with the buy in from agency leadership and management. Other sub-Committees might focus on best practices and requester specific issues "FOIA firefighters." She then opened the floor for a discussion of topics for potential sub-Committees.

Ms. Russ read out comments submitted to the Committee by absent Committee member Lynn Walsh. Ms. Walsh advocated breaking up technology into three areas—proactive disclosure, searches, and management. Her statement elaborated that searches could focus on how FOIA officers are searching, what tools they are using, and agency's best practices.

Ms. Gramian summarized that one area the Committee could focus on is technology.

Ms. Eggleston followed up those suggestions by mentioning that the records practices of agencies are not keeping up with the pace of technology. She cited emails and texts as a specific example.

Mr. Holzerland stated that in order for the Committee to establish sub-Committees on technology, they would first have to define what they mean by technology.

Ms. Ebadolahi added that you would also have to narrow down what search means. What is the database functionality? What is the search functionality? Are searches, technology, and management all separate categories, would the Committee be looking at them together? What are the technologies agencies are using to run the searches? How do those searches differ based on the underlying technology? That information would help requesters make better requests and help determine if delays are justified.

Ms. Gramian said the Committee could discuss narrowing the focus.

Mr. Bekesha suggested that when you look at technology you would have to look at records management, record creation, and the technology when responding to FOIA requests. He stated that there is a need to look at initial stages of creation and management or what technology is being used when a FOIA request comes in- searches, processing/redactions, scanning, posting on web of FOIA requests.

Mr. Holzerland suggested the Committee could look at the functions of technology they would like to see employed versus endorsing certain types of technologies, which the Federal members cannot do.

Mr. Knox would like the Committee to look at best practices within the agencies to see what best practices agencies can overlay on their existing technology, to get the most out of it. He stated that you have to start at the best practices level, rather than looking to the technology for the best practices.

Ms. Gramian suggested that it was up to the Committee to decide how to narrow the sub-Committee's focus. What is the aspect of technology that is most interesting to the Committee and presents a challenge?

Mr. Jones referenced his experience on the 2014-2016 Committee term, and said it would be beneficial for this Committee to tackle tangible issues and come up with solutions, such as 508

compliance and searches. He noted that the biggest bottleneck he experiences as a FOIA requester is in the search phase.

Mr. Moulton added that searches are also a management challenge.

Mr. Knox suggested that technology is a subtopic of a lot of the issues. He suggested that 508 should be its own sub-Committee. He would like some discussion of agency's process automation and efficiencies through the use of technology.

Mr. Jones asked if this included searches.

Mr. Knox stated that he thinks searching could be its own sub-Committee.

Dr. Hershberg agreed that the Committee should look into commitment and awareness and offered the example of requests he has made to the CIA. He also asked if this Committee had any liaison that worked with other agency Committees, such as the History Advisory Committees in other agencies.

Ms. Gramian mentioned the Chief FOIA Officer's Council.

Dr. Hershberg explained in detail the historical Committees he was referencing.

Mr. Susman cautioned against using CIA as an example, since they have a very particular mission and records. He suggested that best practices could be used as an umbrella for technology, 508, and searches. He also stated that technology should be broken out. He noted that a large majority of FOIA litigation cases involved inadequacy of search.

Ms. Gramian asked if the Committee wanted to vote on a particular topic.

Ms. Eggleston suggested that the Committee could also look at legislative fixes.

Ms. Pustay noted that the FOIA was recently amended.

Mr. Susman suggested that legislative fixes might be more than the Committee can handle. There are already three or four organizations working on legislative fixes, and their time is better spent focusing on agency practices rather than Congress.

Ms. McCall suggested the Committee consider resources, efficiency, and funding. She noted that some agencies may be adequately funded but not efficient, or there are agencies that are inadequately resourced and cannot manage their backlog or volume. She said the Committee could look at ways agencies could increase efficiency, and if an agency is efficient but has inadequate resources, the Committee could make a recommendation for additional resources. She also stated that agencies are now responsible for more reporting mandates, but receive no additional funding.

Dr. Hershberg mentioned his experience with the CIA applying “theological exemptions.” Such as how the agency handled presidential daily briefs for year by claiming attorney-client privilege, but then suddenly released them. He also mentioned biographical profiles, which are often released by other agencies. He said he did not know if other agencies came up with “theological exemptions.”

Ms. Pustay stated there is no such thing as “theological exemptions” but rather categories of records. She said they are withholding the information because it is classified and there are tons of procedures for that information.

Dr. Hershberg stated that classified is a subjective adjective.

Ms. Pustay explained that the first term of the Committee decided that they wouldn’t work on issues of classification because there are other bodies such as ISOO which have responsibility for that. She suggested that they take advantage of the Committee’s balanced membership to figure out a way to work on the increasing number of FOIA requests, and how they can help reduce demand.

Mr. Jones remarked that agencies could put more documents online and apply fewer redactions to reduce the increasing number of FOIA requests.

Ms. Pustay said the Committee should be thinking more about alternative sources of access, are there statutory schemes that would help?

Mr. Bekesha recommended that the Committee not disregard legislative fixes so quickly, due to the composition of the Committee. He said there aren’t organizations that have a similar membership which could address some of the issues. He stated that you have FOIA requesters making legislative recommendation and the Federal Government making recommendations, but no discussion between the two groups about what can make the statute better and fix a lot of the problems.

Ms. Kwoka suggested the Committee look at affirmative disclosure, noting that agencies need to get more documents online and can do so by anticipating what categories of records are in demand, to take off the pressure of one-by-one requesting. She strongly supports having a sub-Committee that continues the work of the proactive disclosure sub-Committee of the first term. She suggested that each sub-Committee look at technology surrounding the topic, rather than a standalone sub-Committee.

Ms. Gramian said she thought that was an excellent idea.

Mr. Pritzker followed up Ms. McCall’s comments about inefficiency and resources and he noted that she was linking improvements to efficiency with funding. He would like to link achieving greater efficiency to adopting best practices. It would be useful to identify which agencies are handling their FOIA operations efficiently and recommend what they are doing to the other agencies. He stated that agencies often don’t know when other agencies are doing things well.

Ms. Pustay mentioned that the DOJ has best practices panels which have been successful. OIP also has a page on their website where they post best practices so agencies have that as a resource. She suggested the Committee work with existing DOJ panel structure and have the Committee generate ideas for the DOJ panels.

Mr. Pritzker suggested he had in mind a recommendation to agencies that these resources exist and let them know where they are and how to take advantage of them.

Ms. Gramian asked if one of the topics would be best practices.

Ms. Pustay said best practices on anything connected to FOIA, to improve FOIA.

Ms. Ebadolahi said the goal should be to make FOIA accessible to people without replicating the problems which are burdening the agencies now, in terms of poorly made requests or duplicative requests. She said developing best practices materials would help both sides do its work more efficiently.

Ms. Pustay said she liked the idea of helping people make better requests.

Ms. McCall said she also liked the idea of looking at what agencies have actually done and what has worked as a practical matter.

Ms. Pustay noted requesters will be happy to contribute good experiences they've had with agencies.

Mr. Pritzker said the presentations, prior to this discussion, pointed out agencies which have good 508 programs. Linking the problems to the agencies which have solutions is a positive contribution the Committee can make.

Ms. Lazier reminded the Committee that each sub-Committee will be looking at technology and suggested that all the sub-Committees should also look at best practices for that particular sub-Committee topic. This will help keep the Committee focused.

Mr. Moulton agreed that best practices might be too broad of a topic for the limited time the Committee has. He was going to suggest something different for a best practices sub-Committee, where they do a rolling agenda of topics, rather than constantly talking about random topics. They could cover one and move on. He stated that it would be great to have Section 508 as a sub-Committee but didn't know if the Committee would need two years for the topic, instead they could wrap it up in one year and move on to another topic.

Ms. Pustay mentioned that she liked the idea of having sub-Committees work in cycles, so the Committee could accomplish more. She stated that the Committee could work incrementally with built in milestones so they can work towards a goal.

Mr. Jones said that before they vote he would like to hear a list of all the ideas on the table.

Ms. Gramian directed the members to the topics on attachment 5 for themes identified and read out the themes.

Ms. Ebadolahi suggested they compose a list of what had been discussed up to that point in the meeting, because a lot of topics were discussed.

Ms. Knox read the list he composed—search, 508 compliance, resource/efficiency, proactive disclosure. She stated that each topic would look at the best practices and technology.

Ms. Pustay reiterated that each sub-Committee would look at best practices and technology.

Mr. Knox also said they could identify the agencies that are doing that specific topic well and bring real world examples into it.

Ms. Kwoka agreed that it was a nice way of breaking it up.

Dr. Hershberg asked if agency specific sub-Committees were something the Committee might want to discuss? He suggested that the Committee also look at “worst” practices, at things that need to be addressed in agencies.

Ms. Gramian said if they identify best practices, the agencies that have the “worst” practices would see that information and adopt the practices, rather than pin point what practices are worst.

Dr. Hershberg asked if it would be useful for the Committee to shame particular agencies? Or for shaming Congress for not funding what needs to be done?

Mr. Holzerland noted that this presents a challenge for the Federal employees on the Committee, calling out agencies or Congress. He stated that his understanding the work of sub-Committees is for them to come up with recommendations to submit to the Archivist for addressing certain issues.

Ms. Gramian suggested that if the Committee felt there was a need for legislative fixes, they could suggest OIP issue guidance to agencies in the immediate future.

Ms. Pustay said that the DOJ best practices sessions could provide a lot of good ideas, and that they’ve had a lot of great discussion and examples from small agencies.

Ms. Ebadolahi had questions about what a sub-Committee on resources and efficiencies would look like. Would it look at delays? In terms of poorly made requests and the agencies’ handling of those requests? She said she thinks it is a natural place for delays. She also stated that it is also a place for a discussion of limited resources, for example requesters understanding how some of the small agencies operate can help inform how requesters make requests. She stated that if delays aren’t included in that sub-Committee, maybe they need to have one.

Ms. Gramian noted that the volume of requests and the delays go hand in hand, such as requests for “any and all” when there is no timeframe or focus of the request.

Ms. Ebadolahi stated if requesters knew the types of records agencies had, they could make more informed request, rather than “any and all” requests. Often requesters don’t know what they should be asking for, because they don’t know what records exist and how they are maintained.

Ms. McCall mentioned that the FOIA Public Liaison is supposed to function in that role- helping requesters narrow requests. She said that the topic of delay could be added to resources and efficiency. She noted that the last term of the Committee had 3 sub-Committees, she noted currently they are looking at four topics and 508 and proactive disclosure could be combined into one.

Mr. Jones noted that other Committee members had suggested legislative fixes and that should be on the table.

Ms. McCall stated that legislative fixes could be something every sub-Committee researches for that particular topic.

Mr. Pritzker noted that in order for the Committee to find out what is working and what is not working they need to determine what is causing the delays and the inadequacy of searches. If they identify what the problems are they can link them up with potential solutions.

Ms. Pustay stated that she also reviews all the FOIA litigation cases and in a lot of the cases where the search is challenged, the Government wins. She noted that these issues are very case specific.

Mr. Pritzker clarified that if one of the problems is that searches are inadequate, what the Committee can do is research what is making them inadequate and look for ways to improve that.

Ms. Pustay said that searches would be a great best practices topic.

Mr. Susman agreed that education of requesters is important in reducing inadequate searches.- more informed requests allow the agencies to conduct adequate searches. He explained that in his work at the American Bar Association he runs a legislative affairs staff. He said the requester community can’t agree amongst themselves, and the Government never agrees with the requester community. He thinks it’s a waste of the Committee’s time to look at the legislative issues.

Ms. Gramian said maybe the topics that Committee researches and deliberates on could later end up being a legislative fix, but having a stand-alone legislative sub-Committee is not doable.

Ms. Lazier suggested that the Committee consider a senior leadership/commitment sub-Committee. It could be part of the resources/efficiency sub-Committee.

DRAFT DOCUMENT

Ms. Gramian summarized the topics the Committee is considering—best practices/technology, resources/efficiency (delays/volume), proactive disclosure/508, search, legislation, and awareness/commitment.

Dr. Hershberg asked Ms. Gramian to explain why 508 compliance is part of proactive disclosure.

Ms. Gramian explained that the Committee discussed this.

Ms. Ebadolahi said that most of the time 508 compliance and proactive disclosure are competing requirements the agencies are trying to balance.

Ms. McCall stated that it was her suggestion to combine the two topics because 508 is often tied to proactive disclosure, it is a hurdle agencies reference when the requester community brings up the proactive disclosure proposal.

Mr. Susman asked why resources, delay, and volume are all together? If the issue is delay and volume, resources may or may not be the answer.

Ms. McCall said focusing on delays and backlogs and comparing the ways agencies use their resources (tech, human, monetary) would be a good way to structure that, maybe following the resources downstream. She asked if Mr. Susman still had a question.

Mr. Susman said it sounds like resources is now merging into best practices.

Ms. McCall said, as they already discussed, best practices would be an aspect of every sub-Committee. She noted her interest in talking about resources and efficiencies is looking at actual practices within agencies - who is able to handle their backlog and why? Which agencies allocate more or less resources? What is the effect of that? What technological resources are being harnessed by agencies? If they find there aren't enough budgetary resources being harnessed by an agency, and people to manage their backlog and case load, the sub-Committee could make a recommendation for more resources. The sub-Committee could always start from the other end and review backlogs, processing, and volume comparatively.

Mr. Susman stated that he likes the idea of starting with efficiencies before resources. The sub-Committees can work out the best practices so there is no overlap.

Ms. McCall said she amends her proposal from budgets to efficiencies.

Ms. Ebadolahi confirmed that best practices would be a part of each sub-Committee, rather than its own Committee. She asked if any of the Committee members would object to that being eliminated.

Mr. Susman noted that technology is housed in the best practices topic.

Ms. Gramian explained that technology is also going to be a part of each sub-Committee.

Ms. Ebadolahi clarified that technology and best practices are going to be a theme under each sub-Committee.

Mr. Knox included agency specific examples.

Ms. McCall included awareness and commitment within each sub-Committee and legislative fixes.

Ms. Gramian summarized the topics as efficiencies and resources (funding), proactive disclosure and 508 compliance, and searches.

Ms. Ebadolahi asked questions about the process.

Ms. Gramian reminded the Committee members that each member must serve on one sub-Committee, each sub-Committee can only have up to nine members, and explained the role of the sub-Committee chairs.

Volunteers for Sub-Committees

Ms. Gramian asked for volunteers to chair the sub-Committee on Efficiencies and Resources.

Ginger McCall (Government)

Chris Knox (Representative)

Ms. Gramian asked for Committee members who wished to serve on that sub-Committee.
(List Volunteers)

Ms. Gramian asked for volunteers to chair the sub-Committee on Proactive Disclosure/508 Compliance

William Holzerland (Government)

Margaret Kwoka (Representative)

Ms. Gramian asked for Committee members who wished to serve on that sub-Committee.
(List Volunteers)

Ms. Gramian asked for volunteers to chair the sub-Committee on Searches.

Logan Perel (Government)

Nate Jones (Representative)

Ms. Gramian asked for Committee members who wished to serve on that sub-Committee.
(List Volunteers)

Dr. Hershberg asked if membership could be completed through email so that there was more time for public comment.

Ms. Gramian said the members could email which sub-Committees they would like to participate in.

Public Comment

Ms. Gramian opened the floor to public comments. She noted that two emails were sent to the Committee regarding FOIA requests, which are in the member's folders.

Mr. Jones noted that one of the emails mentions FOIA Exemption 5. He said that using Exemption 5 to withhold a document that is in the public domain is not acceptable and he sees it all the time.

Ms. Cindy Cafaro, from the Department of the Interior, spoke within her personal capacity regarding the 508 issue. She said there is always the question if agencies are using the 508 compliance as a "get out of jail free card." She said she heard the presenters today say if agency documents are not accessible they cannot be posted, or should be taken down. She noted that FOIA processors are often the parties doing the 508 compliance and the agency's 508 contact doesn't have the staff do the work. She stated that every moment they are spending on 508 compliance is time that is not spent on providing materials to FOIA requesters. She appreciates that the Committee is going to be looking at this issue.

Mr. Jones clarified that the presenters said of the documents already posted that are not compliant, agencies do not have to remove them from the website.

Ms. Cafaro noted that there was disagreement between the two speakers one said yes pull them down, and the other said no you can keep them up. She said she has been actively discouraged from putting up an accessibility disclaimer/waiver. Some people think the agency is trying to circumvent FOIA or 508 and putting up a waiver may signal that they are not fully complying with their obligation under 508. She stated that agencies are between a rock and a hard place.

Mr. Jones said the agency will have to research when agencies can do disclaimers and what the standard for undue burden is.

Dr. Hersberg asked the question instead of agencies having the responsibility for this, if there technologies out that do this work, why can't the Government make that software available so the requesters could have the responsibility to do the 508 compliance rather than the agency.

Mr. Alex Howard of the Sunlight Foundation, asked Dr. Hersberg if he is suggesting offloading the burden of OCR to the requester community? He said it was an interesting idea.

Ms. Gramian noted that she wasn't sure someone with a disability, for example a blind person, would be able to make a document accessible.

Dr. Hersberg said maybe there are associations that could do this to make it uber accessible.

Mr. Howard noted that Uber the company is not an accessible company. Mr. Howard said he wrote a story about openFDA, a database for adverse reaction to medicines. He said the FDA went to a Silicon Valley company, Captricity, to outsource the digitization of the records, which was faster and cheaper than anything the Government was using. He said that type of approach

should be front and center in Government. He said they should look at IT modernization-adaption/adoption and pushing for things that enable FOIA officers to be creating records which are digital by default, open by default. He said the Government should create data that is open by default and gave the example of the Internal Revenue Service (IRS) lawsuit about non-profit tax returns which were born digital records, but converted in an unusable format. He noted that the presentation at the Committee went through the remediation of proprietary formats - .doc, .pdf, .xls. He noted that the Committee itself is posting PDFs rather than webpages. He asserted if data is created open and accessible it addresses many of the issues they are discussing down the road. He said there should be a national scanning initiative, and noted that the National Archives and the Smithsonian are currently crowdsourcing to make their holdings accessible. He stated that removing records from agency websites because they are not accessible is going in the wrong direction. He said it is farcical that accessibility should be the limitation for posting things online. Modern technology can help with this—he gave an example of his visit to Facebook working with a blind scientist. He noted that the technology is available.

Mr. Michael Ravnitzky, speaking as a private individual, noted that most FOIA requests are for existing records, so a lot of the discussion about the creation of 508 compliant records is not terribly relevant to the primary issue at hand. He said that 508 compliance is used as a red herring and agreed with the other speakers. He said increased access under 508 is a good practice and helps everyone. He stated that when you make things more accessible on the web you help more than just the people who physically need the accessibility. He said that most discussions about 508 compliance lead to discussions of lack of resources, and support. He said that's a bad way to go about this decision because it is a false binary choice. He mentioned crowdsourcing as well and said that agencies cannot let the perfect get in the way of the good. He mentioned issues with record reproduction within agencies, such as pages being skewed, too small, upside down, not produced in a usable format. He mentioned the benefits of OCR and that few FOIA offices OCR their documents. He gave the example of using OCR so that you can copy and paste or search a document for keywords. He said OCR helps agencies move towards accessibility. He said often agencies use their technology and policies as an excuse for not providing the responsive records in a format they asked for, because the agency has redaction software which only allows for certain formats. He also spoke of challenges regarding agencies issuing FOIA responses which are locked or password protected, which can limit combining files for usability (concatenation). He noted password protection makes sense for Privacy Act requests, but shouldn't be part of agencies' policies for FOIA requests. He stated that the 508 problem cannot be solved by the Committee or by FOIA officers themselves, not by records managers. He said he has worked with some great FOIA processors who do everything they can to get good quality releases out; he gave the example of the Department of Energy's release of Manhattan Project documents. He offered a few suggestions for correcting common problems requesters face on a daily basis: agencies should scan in a resolution of 400 dpi or better, only scan in color if the documents have color, the resulting product should resemble the original, eliminating password protection unless absolutely necessary, technology should allow for release of records in native format, and agencies should reconsider requests for more legible documents. He would like to see the Committee recommend some of these steps.

Mr. Moulton asked if Mr. Ravnitzky submitted his comments to the Committee's email.

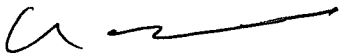
Ms. Gramian noted that meeting is being transcribed.

Dr. Hershberg said it would be helpful to have all his comments.

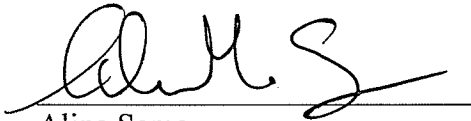
Closing Remarks

Ms. Gramian thanked members for their work. She reminded Committee members that the next meeting is on Thursday January 26, 2016, in the McGowan Theater. Ms. Gramian adjourned the meeting.

I certify that, to the best of my knowledge, the foregoing minutes are accurate and complete on January 27, 2017.



Amy Bennett
Designated Federal Officer, 2016-2018 Term



Alina Semo
Chair