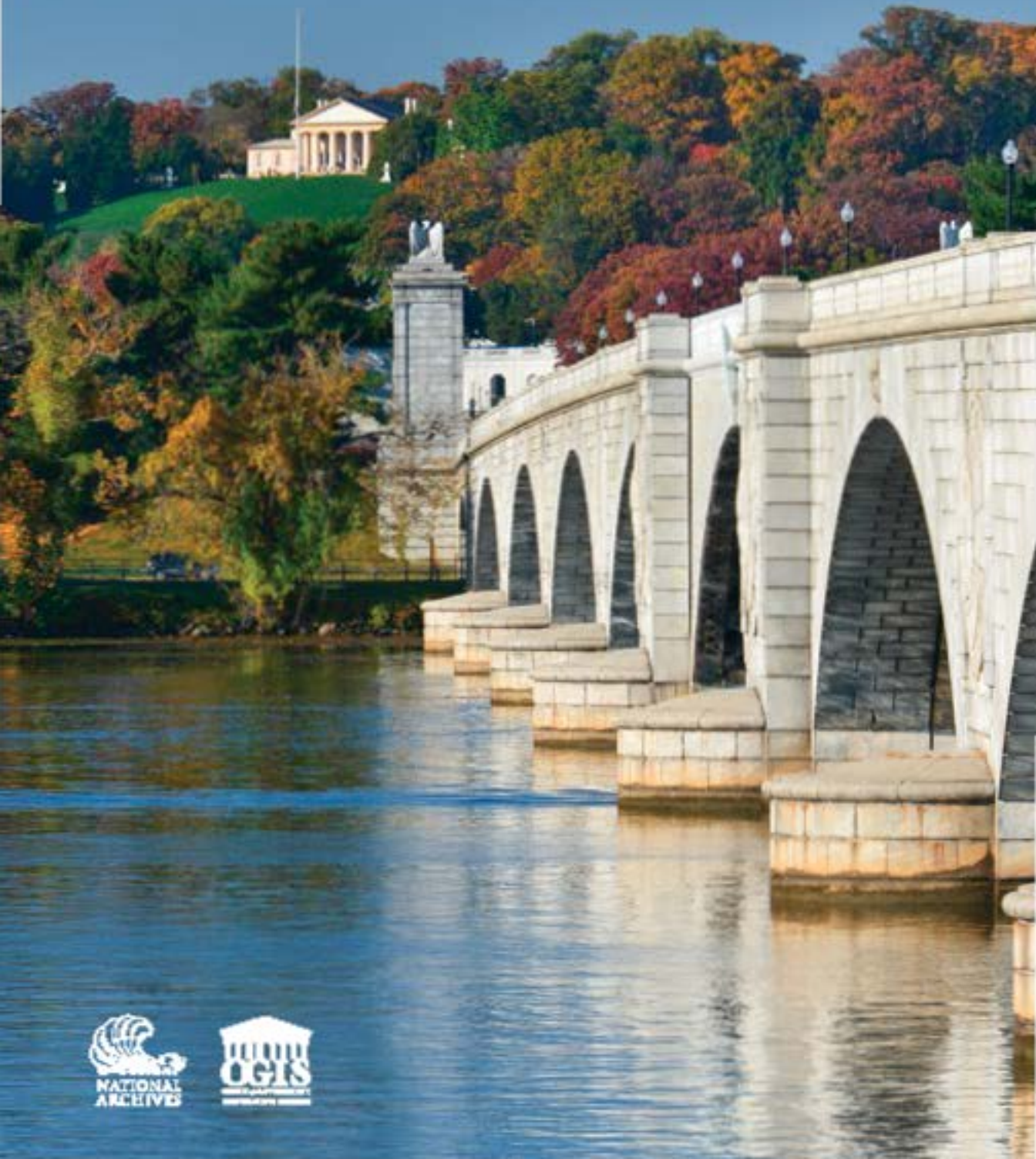


Office of Government Information Services

# *Building a Bridge Between FOIA Requesters & Federal Agencies*

2014 Report for FY 2013



# 2013

Office of Government  
Information Services

*Building a Bridge Between  
FOIA Requesters &  
Federal Agencies*

2014 Report for FY 2013





*Cover image: Orhan Cam/Shutterstock.com*  
*Memorial Bridge, Washington, DC*

# *Table of Contents*

# *Message from the Director*

I am pleased to present the fourth annual report from the [Office of Government Information Services \(OGIS\)](#) detailing our fiscal year (FY) 2013 activities. We are extremely proud of all that OGIS has accomplished in our four years of operation. We have put Congress's novel idea—applying [Alternative Dispute Resolution](#) techniques to an often highly adversarial process—into action. We have assisted thousands of [Freedom of Information Act \(FOIA\)](#) requesters from across the country and around the globe, along with dozens of agencies, in resolving disputes, some of which would have otherwise led to costly litigation. We have worked with agencies to better fulfill their responsibility to provide good customer service, resolve disputes with FOIA requesters, and promote compliance with FOIA.

Demand for OGIS's services is high. Requests for assistance in resolving FOIA disputes greeted me the morning the office opened four years ago. In FY 2013, the number of incoming cases jumped 40 percent from the previous year to more than 500 cases; at the same time, we closed nearly 500 cases—also a 40-percent increase from the previous year—and handled hundreds of inquiries by telephone and email.

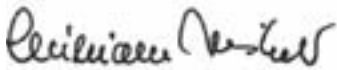
Much work remains for our innovative program. While we have carried out Congress's mandate to review Federal agency FOIA policies, procedures, and compliance in several ways, we would like to implement a more robust review program. OGIS's mission is broad, and like many government programs, we

must make difficult choices about how we carry out our mandate as demand for our services increases.

We look forward to building on our first four years and continuing our service of helping anyone—requester or agency—with any part of the FOIA process and improving the administration of FOIA.

You may notice that this report is slimmer than our first three reports. Please visit our blog, [The FOIA Ombudsman: Information and Advice](#), where you'll find many of the items we included in past reports.

Sincerely,

A handwritten signature in black ink, appearing to read "Miriam Nisbet". The signature is written in a cursive, flowing style.

Miriam Nisbet

# Resolving Disputes

OGIS's mediation services to resolve Freedom of Information Act (FOIA) disputes, as mandated by Congress, comprised the bulk of OGIS's work in FY 2013, as in the previous three years. Requests for assistance awaited Director Nisbet when she opened the Office, and early on, OGIS decided that demand for mediation services dictated that the Office commit to assisting anyone asking for help with FOIA.

From the start, OGIS has served as a confidential and informal information resource, communications channel, complaint handler, and dispute resolver. OGIS strives to be an advocate not for the requester or the agency, but for an effective FOIA process that works as intended.

In its first three years, OGIS handled an average of roughly 350 cases a year. The number of requesters seeking OGIS

OGIS's caseload soared above 500 for the first time in FY 2013. (NARA Identifier 6443896)





assistance swelled in FY 2013, the Office's fourth year. OGIS opened 508 cases, a 40-percent increase from FY 2012 when OGIS opened 361 cases. OGIS also handled more than 230 inquiries—telephone calls and emails yielding quick responses that did not require cases be opened—in FY 2013. OGIS closed 497 cases in FY 2013, a 40-percent increase from FY 2012 when the Office closed 354 cases.

OGIS cases involve issues that arise at various points in the FOIA process.



OGIS encourages requesters and agencies to communicate through whatever means work best for them. (NARA Identifier 6479577)

In some cases, requesters attempt to learn a request's estimated date of completion as required by FOIA, 5 U.S.C. § 552(a)(7)(B) (ii), but are not able to obtain it from an agency. In other cases, requesters disagree with an agency's application of FOIA exemptions or an agency's decision with regard to FOIA fees. In all cases, there is some issue that benefits from OGIS-facilitated communication between the requester and the agency.

OGIS's mediation services also include providing Dispute Resolution Skills training to agency FOIA professionals. The goal of training is not to turn agency

## 2007

### December 14

U.S. Senate passes by unanimous consent the [Openness Promotes Effectiveness in our National \(OPEN\) Government Act of 2007](#), which includes a provision creating the [Office of Government Information Services \(OGIS\)](#) at the [National Archives and Records Administration \(NARA\)](#)

### December 18

U.S. House passes the OPEN Government Act of 2007 by a voice vote

### December 31

President George W. Bush signs the OPEN Government Act of 2007; it becomes Public Law 110-175

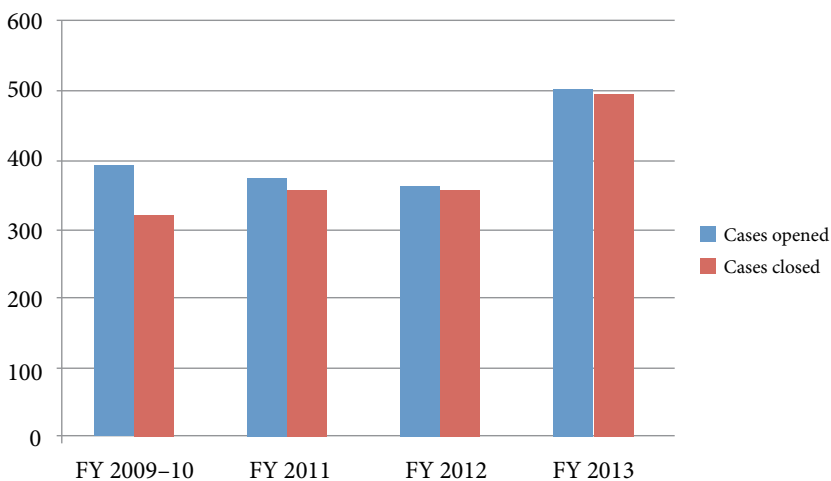
*Patent drawing for watch case* (NARA Identifier 7451700)





FOIA professionals into mediators, but to give them Alternative Dispute Resolution tools to incorporate into their FOIA work and help them comply with the statutory requirement that FOIA Public Liaisons assist in resolving disputes, 5 U.S.C. §§ 552(a)(6)(B)(ii) and 552(l). In FY 2013, OGIS offered three sessions of Dispute Resolution Skills training—two sessions in December 2012 and May 2013 that included participants from several agencies and a Department of Labor–specific session in June 2013.

### OGIS's Caseload



## 2009

### September 8

NARA opens OGIS, with Miriam Nisbet as its first director

### September 9

OGIS opens its first case, which involves a delay

### September 30

Director Nisbet testifies before the Senate Judiciary Committee hearing on [“Advancing Freedom of Information in the New Era of Responsibility”](#)

### October 13

The first staff member joins OGIS

### October 20

The OGIS website goes live

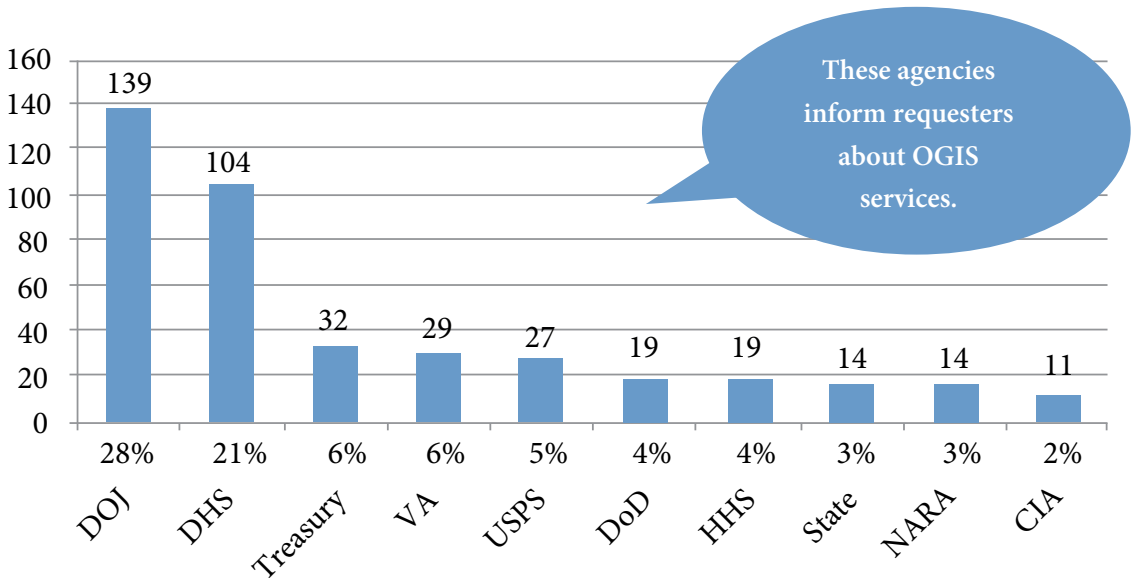
### October 26

OGIS's staff increases to three

### November 10

OGIS adds a case-tracking log to its website allowing customers to check the status of their requests for OGIS assistance

## Top 10 departments & agencies involved in FY 2013 OGIS cases



### 2009

#### November 22

OGIS's staff increases to four

#### December 6

OGIS's staff increases to five

#### December 7

OGIS and the Department of Justice's [Office of Information Policy \(OIP\)](#) co-host a meeting for FOIA Public Liaisons to discuss recent changes to FOIA

### 2010

#### January 21

OGIS opens its 50th case

#### February

OGIS joins other agency representatives to discuss the feasibility of a multiagency FOIA portal

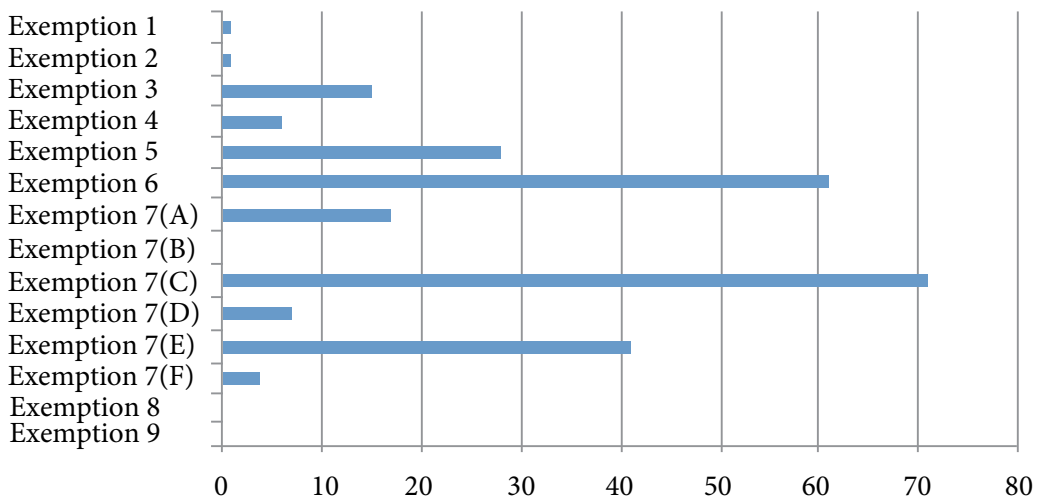
#### February 7–10

OGIS staff present at the [American Society of Access Professionals \(ASAP\)](#) National Training Conference

#### March 1

OGIS's staff increases to six

## OGIS FY 2013 cases by exemption



2010

### March 9

OGIS opens its 100th case

### March 15–19

OGIS celebrates [Sunshine Week](#)

### March 18

Director Nisbet testifies before the House Oversight and Government Reform's Information Policy, Census, and National Archives Subcommittee hearing on "[Administration of the Freedom of Information Act: Current Trends](#)"

### March 23

OGIS holds its first training session for FOIA Public Liaisons in collaboration with the Federal Energy Regulatory Commission (FERC) and the Department of Justice's Office of Information Policy (OIP)

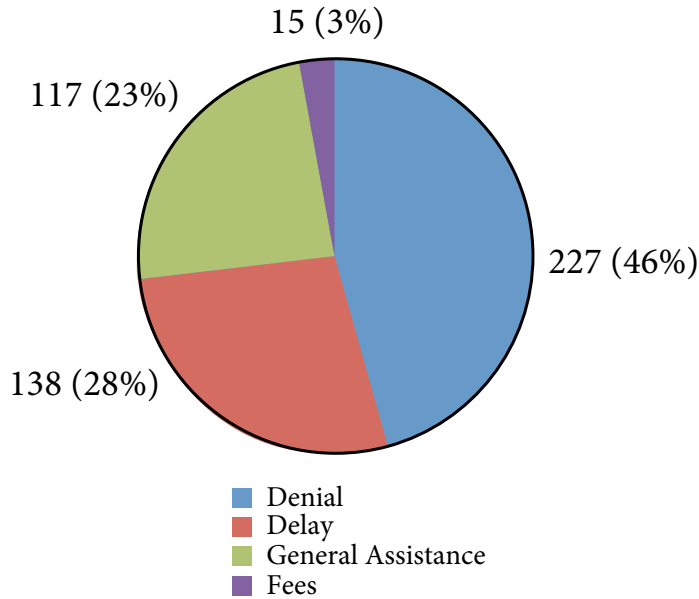
### April 18–23

Director Nisbet represents OGIS at the [Chilean Council for Transparency](#)

### April 29

OGIS opens its 200th case

## OGIS 2013 cases by category



## 2010

### May 10

OGIS's staff increases to its current size of seven

### July 14

OGIS opens its 300th case

### August 24

Director Nisbet represents OGIS at



the 7th National Transparency Week Conference in Mexico City, Mexico

### December 6

Director Nisbet participates in the [Council of Governmental Ethics Laws](#) annual conference

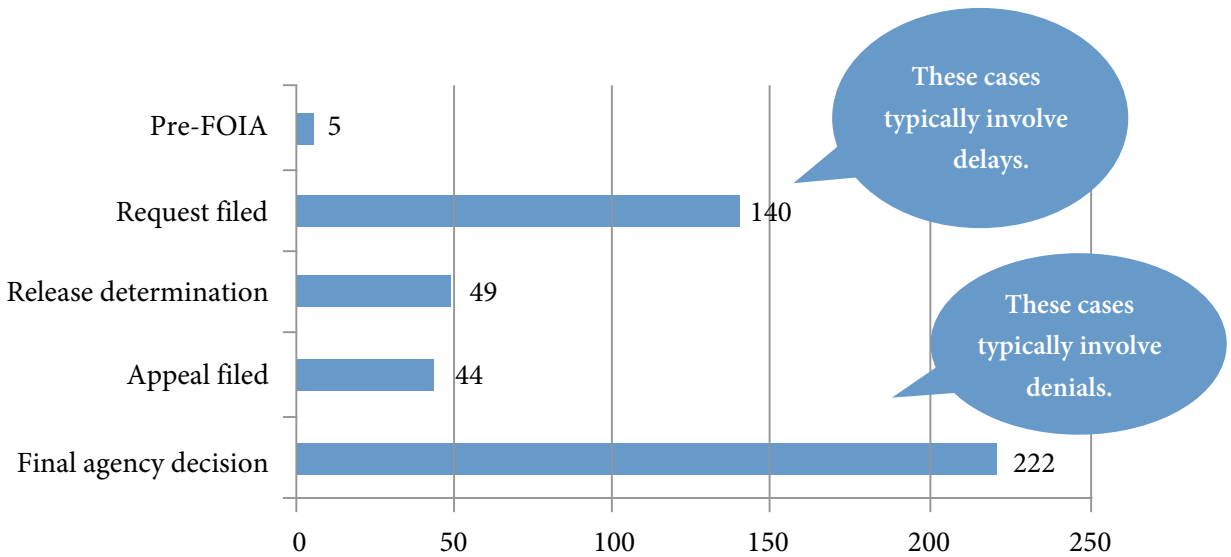
OGIS opens its 500th case

### December 10

OGIS submits its first comments on agency FOIA regulations

*Sailor adjusts clock.* (NARA Identifier 6422494)

## When in administrative process requesters came to OGIS (FY 2013 cases)



## 2011

### March 11

OGIS launches its blog [“The FOIA Ombudsman: Information and Advice”](#)

### March 14–18

OGIS celebrates [Sunshine Week](#)

### March 15

Director Nisbet testifies before the Senate Judiciary Committee hearing on [“The Freedom of Information Act: Ensuring Transparency and Accountability in the Digital Age”](#)

### March 17

Director Nisbet testifies before the House Oversight and Government Reform Committee hearing on [“The Freedom of Information Act: Crowd-Sourcing Government Oversight”](#)

### July 7–8

Director Nisbet presents at the United Nations Educational, Scientific and Cultural Organization ([UNESCO](#)) Seminar on Transparency in Brasilia, Brazil

# Measuring Success

From OGIS's start, the Office has faced enormous challenges in measuring its success. While litigation typically results in judgment for one party or the other, the success of mediation services depends on compromise by the parties, whose participation is voluntary. Experience has taught us that OGIS's success may not rest in the *outcome* of mediation services, but in the *process* of providing mediation services.

Mediation is a voluntary alternative dispute resolution process in which a neutral third party, a mediator, assists disputing parties in reaching a mutually agreeable resolution. Mediators do not direct outcomes or resolutions to a dispute; the outcome of mediation depends on the extent to which the parties choose to engage in the process and themselves agree to an outcome. There may not necessarily be a "correct" answer; rather, the disputing parties may choose to agree to a compromise that both parties can accept, or they may choose to not compromise at all. As such, the *outcome* of mediation is not an effective way to determine the success of OGIS's mediation services because OGIS does not determine the outcome. However, OGIS does control

## 2011

### August

OGIS facilitators become certified in Federal workplace mediation by [Northern Virginia Mediation Service](#)

### September

Construction of multiagency FOIA portal begins

### October 2–6

Director Nisbet presents at the [International Conference of Information Commissioners](#) in Ottawa, Canada

### November 28

OGIS launches its [online case management system](#), the OGIS Access System

### December 7–8

OGIS staff presents at the [American Society of Access Professionals](#) Annual Symposium

the steps required to administer mediation itself, and the Office’s success in mediation services can be more uniformly evaluated in that regard. The challenge of evaluating success of mediation services is not unique to OGIS or to the government—other ombudsmen struggle with the same issue.

The Government Accountability Office (GAO), which conducted an [audit of OGIS](#) in FY 2013, recommended that OGIS establish performance measures and goals for its mediation services that define the Office’s success in handling mediation cases.

The GAO recommendation, coupled with OGIS’s experience providing mediation services, will inform OGIS’s FY 2014 creation of performance measures and goals for the work OGIS does. That multifaceted work



One challenge OGIS faces is measuring its success. (NARA Identifier 6600378)

## 2012

### March 12

Archivist of the United States David Ferriero joins Director Nisbet in welcoming guests to the National Archives to view the original Freedom of Information Act in observation of [Sunshine Week](#)

### March 13

Director Nisbet testifies before the Senate Judiciary Committee on [“The Freedom of Information Act: Safeguarding Critical Infrastructure and the Public’s Right to Know”](#)

### March 21

Director Nisbet testifies before the House Oversight and Government Reform’s Technology, Information Policy, Intergovernmental Relations and Procurement Reform Subcommittee hearing on [“The Freedom of Information Act and Information Technology”](#)

### March 21–23

OGIS staff presents at the [American Society of Access Professionals](#) National Training Conference



includes interacting with requester and agency customers, and providing assistance, from answering basic questions about FOIA to facilitating communication between disputing parties to convening multiple agencies working on the same or similar requests.

## 2012

### **May 24**

OGIS opens its 1,000th case

### **August 2–3**

OGIS staff presents at the [American Society of Access Professionals](#) Summer School training

### **September 11**

The Inspector General at the National Archives and Records Administration releases a [report on OGIS](#) as part of its routine examination of NARA offices

### **October 1**

Online FOIA request portal, [FOIAonline](#), goes live at six agencies, including NARA

### **December 4–5**

OGIS staff presents at the [American Society of Access Professionals](#) Annual Symposium

# Agency Review

**O**GIS also is tasked with reviewing agencies' FOIA operations and compliance.

OGIS reviews agencies' FOIA policies, procedures, and compliance in various ways. Our review work includes

- Providing Dispute Resolution Skills training to agency FOIA professionals to help them comply with the statutory requirement that FOIA Public Liaisons assist in resolving disputes, 5 U.S.C. §§ 552(a)(6)(B)(ii) & 552(l)
- Highlighting Best Practices for agencies and requesters
- Reviewing and commenting on proposed agency FOIA regulations
- Reviewing FOIA websites and template letters
- Working with agencies when the Office observes policies or procedures that are not consistent with FOIA law or policy, or that may differ from the practices occurring at other agencies
- Review of government and non-government reports on FOIA activity and compliance

## 2013

### March 1

Director Nisbet discusses "Mediating FOIA Cases" with the mediators of the U.S. Courts of the District of Columbia Circuit

### March 8

Archivist of the United States David Ferriero sends a [notice](#) to the 2,500 employees of the National Archives reminding them that FOIA is everyone's responsibility.

### March 12

Archivist of the United States David Ferriero joins Director Nisbet in welcoming guests to view the original Freedom of Information Act, in observation of [Sunshine Week](#)

Director Nisbet presents to the U.S. House Transparency Caucus on "The Future of FOIA Reform"



OGIS has identified FOIA fees as an issue that warrants study. (NARA Identifier 6011228)

## 2013

### March 13

Director Nisbet testifies before the Senate Judiciary Committee hearing titled [“We the People: Fulfilling the Promise of Open Government Five Years After the OPEN Government Act”](#)

### May 3

Director Nisbet represents the United States at the Canadian Association of

Journalists’ observation of [World Press Freedom Day](#) in Ottawa, Canada

### May 13–15

OGIS Staff participates in the [American Society of Access Professionals](#) National Training Conference

### July 18

OGIS opens its 1,500th case

### September 10

Government Accountability Office (GAO)

In FY 2013, OGIS began looking at several specific issues regarding agency policies, procedures, and compliance, including FOIA fees and fee waivers, and the ways agencies process records related to immigration matters. OGIS also began a “Preventing Litigation” project, working with agencies on ways to reduce their chances of a request resulting in litigation.

GAO recommended that OGIS establish a time frame for completing and implementing a methodology that defines, among other things, the scope, schedule, criteria, and evaluation questions for reviewing Federal agencies’ FOIA policies, procedures, and compliance. OGIS had already begun creating a draft assessment framework, which will form one piece of OGIS’s expanded review methodology.

GAO’s recommendation mirrored that of the National Archives and Records Administration’s Inspector General (IG), which conducted a [routine review of OGIS](#) in FY 2012 to determine whether OGIS was adequately established and meets Congress’s intent. The IG report, completed in September 2012, found that OGIS meets the requirements set forth in FOIA with regard to both review and dispute resolution. The IG found that “additional resources could significantly improve OGIS’s ability to address and meet its mission.”

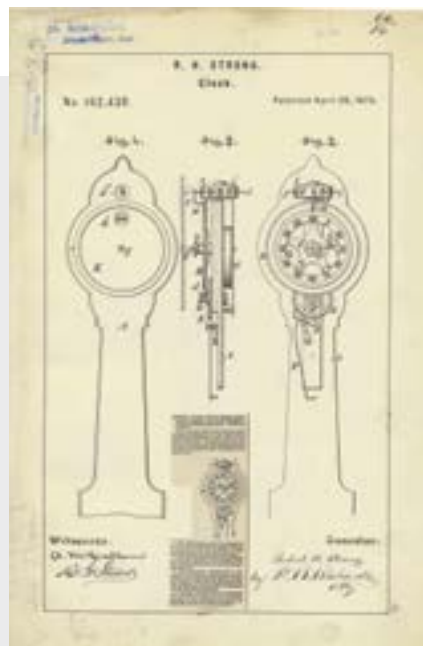
In response to the GAO recommendations, NARA concurred with both recommendations and will work to address them in FY 2014.

## 2013

releases [report on OGIS](#) along with two recommendations

**September 18–20**

Director Nisbet represents the National Archives and Records Administration at the biennial [International Conference of Information Commissioners](#) in Berlin



*Patent drawing for R.H. Strong clock  
(NARA Identifier 7451701)*

## OGIS RECOMMENDATIONS FOR IMPROVING FOIA

FOIA also directs OGIS to make recommendations to Congress and the President to improve FOIA. In April 2012, OGIS released [five recommendations](#) that the Office compiled in its first years. For example, OGIS encouraged agency participation in [FOIAonline](#), the Federal Government's first multiagency FOIA portal. As a founding partner in *FOIAonline*, OGIS continues to support the portal's improvement of services and expansion of partners.

In March 2013, OGIS issued [four additional recommendations](#) for improving FOIA.

### 1. IMPLEMENTING DISPUTE RESOLUTION FOR FOIA CONFLICTS

OGIS expanded its dispute resolution program to connect FOIA professionals, legal counsel, and dispute resolution professionals to embed dispute resolution firmly into an agency's FOIA process. The goal is to identify issues that are ripe for partnership and explore ways to work together to prevent and resolve disputes as well as avoid litigation.

In 2013, OGIS identified several agencies, including OGIS's parent agency, NARA, to help to pilot a project designed to prevent and resolve disputes as well as avoid litigation. OGIS has begun meeting with each of these agencies to determine the types of FOIA disputes that result in litigation and to explore ways to incorporate dispute resolution into their FOIA processes. (OGIS also has worked with the [Administrative Conference of the United States](#) to promote research into FOIA litigation to inform this process.) OGIS will continue to pilot this project in FY 2014.

## 2. REITERATING THE IMPORTANCE OF FOIA

OGIS routinely encourages all Federal agencies to remind their staff members of the importance of FOIA and that FOIA is everyone's responsibility. During [Sunshine Week 2013](#), Archivist of the United States, David Ferriero, sent such a [message](#) to NARA staff. Other agencies, including the Departments of [Energy](#) and Transportation, sent similar messages throughout the year. OGIS continues to encourage all agencies to remind their staffs of the importance of FOIA and offers the Archivist's message as a model.

## 3. EXAMINATION OF FOIA FEES

OGIS continues to observe that fees and fee waivers remain a persistent point of contention administratively and in litigation. OGIS began examining FOIA fee issues by reviewing its own fee-related cases over the past four years and identifying common themes. OGIS intends to continue this project in FY 2014 by working with stakeholders from both inside and outside government to discuss fee issues.

## 4. IMMIGRATION RECORDS AND FOIA

Over the past four years, OGIS has observed a large increase in our cases related to requests for immigration-related records from individuals who are not U.S. citizens or lawful permanent residents. OGIS began communicating with agency officials who receive these types of requests, as well as with some of the requester organizations and representatives who file them. OGIS continues to work with agencies to streamline the process and to identify issues related to first-party immigration-related records requests that will inform OGIS stakeholders as well as Congress and the President.

## LOOKING AHEAD

In its fifth year, OGIS will continue to offer mediation services to requesters and agencies; review agencies' FOIA policies, procedures, and compliance; and identify additional areas for improvement in the FOIA process through recommendations to Congress and the President. OGIS will also work to implement GAO's recommendations of creating performance measures and goals for its mediation services, as well as to build on its review program.

## SPECIAL THANKS

OGIS thanks the 113th Congress for its support of the FOIA Ombudsman's office: [Senate Judiciary Committee](#) Chairman Senator Patrick Leahy and Ranking Member Senator Chuck Grassley, and their personal and committee staffs, particularly Lydia Griggsby; Representative Darrell Issa, chairman of the [House Committee on Oversight and Government Reform](#), Ranking Member Representative Elijah Cummings, and Representative John Mica, chairman of that committee's [Subcommittee on Government Operations](#), and their personal and committee staffs, particularly Krista Boyd and Tegan Millspaw; and Wendy Ginsberg of the [Congressional Research Service](#).

We extend a special thanks to our colleagues at the [National Archives](#), including David S. Ferriero, Archivist of the United States; Jay Trainer, Executive Head for Agency Services; and National Archives General Counsel Gary M. Stern and Assistant General Counsel Jean Whyte for their support of OGIS's work.

We also thank Susan Ashtianie, Susan Cummings, and Mary Drak for their guidance and help with the GAO report.





OGIS sends “bouquets” of thanks to people inside and outside of Government.  
(NARA Identifier 6728212)

We thank John Albanes, who was a student at the American University Washington College of Law, who spent a semester volunteering his time at OGIS.

Finally, we would like to thank the legions of FOIA professionals at agencies who work with us on a daily basis and the hundreds of FOIA requesters who seek our assistance.

