

National Archives and Records Administration
March 5, 2020
Freedom of Information Act (FOIA) Advisory Committee Meeting Transcript
10:00 a.m. - 1:30 p.m. (EST)

DAVID S. FERRIERO: Good morning and welcome back. I'm David Ferriero, Archivist of the United States if you haven't met me before, so welcome back to my house for this meeting of the Freedom of Information Act Advisory Committee. Whether you are here in the McGowan Theater here at the National Archives or joining us on our YouTube channel, we are pleased to have you with us.

Since September 2018, its committee members, who I appointed for their considerable FOIA expertise both inside and outside of government, have worked hard to study the Federal FOIA landscape by collecting and delving into data and hearing from other experts. And I understand that the three subcommittees, Time/Volume, Vision, and Records Management, have nearly 20 proposed recommendations for actions to improve the FOIA process. Committee members, I look forward to your continued deliberation and discussion as you work towards the final two meetings of this term on May 1 and June 4, and a final package of recommendations coming to me.

Before turning the meeting over to the committee's chair, Alino Semo, I would like to invite everyone back to the McGowan Theater for several upcoming events. One week from today on Thursday, March 12, starting at 10:00 a.m. the National Archives National Declassification Center will celebrate ten years of public service with a discussion entitled, "Reflecting our beginnings, forecasting our future." I'm proud that during the last decade the National Declassification Center has examined a backlog of more than 350 million pages of classified material and streamlined processing for declassification.

Later on March 12 starting at 1:30 p.m., the NDC is teaming with two other National Archives offices, OGIS and ISOO, the Information Security Oversight Office, for a multi-agency forum on using FOIA to access intelligence community records. We're pleased that representatives of the FOIA offices from several intelligence community agencies will join us for that session.

And the following week, Monday, March 16 beginning at 1:00 o'clock the National Archives celebrates Sunshine Week, an annual nationwide celebration of access to public information. Please join us for a conversation with my hero Senior U.S. District Court Judge Royce C. Lamberth, whose rulings are known in the FOIA community.

Following that a panel of experts on FOIA and access issues will discuss the current transparency landscape. Go to our calendar on [archives.gov](https://www.archives.gov) for information about how to register for any of these events. We hope to see you here. Now I'll turn the meeting over to Alina.

ALINA M. SEMO: Thank you David. Good morning everyone. As the Director of the Office of Government Information Services, OGIS, and this committee's chairperson, it is my pleasure to welcome you all to the William G. McGowan Theater and the National Archives and Records Administration for the seventh meeting of the 2018-2020 term for the FOIA Advisory Committee. Whether you are here in person, thank you for coming in person, via telephone or via live stream. Shortly, I will go through some

housekeeping rules—we actually have more of them today so bear with me, review our general agenda, and set some expectations for today’s meeting.

First, I want to take the opportunity to introduce our committee members who are participating in our meeting today. We have close to seven folks on the phone so we are going to have to remember to pause after we speak and make sure we check in with the folks on the phone. Will you guys remind me? Because I always forget. So, let me do the folks on the phone first. Kevin Goldberg. Are you here? Can you introduce yourself and your professional affiliation?

KEVIN M. GOLDBERG: Yes, I’m Kevin Goldberg.

ALINA M. SEMO: Kevin, we can barely hear you. Can you speak up a little bit?

KEVIN M. GOLDBERG: Yes, is this better or worse?

ALINA M. SEMO: Better.

KEVIN M. GOLDBERG: I was probably just too close. Kevin Goldberg. I’m the Vice President, Legal, for the Digital Media Association.

ALINA M. SEMO: Chris Knox?

CHRIS KNOX: Good morning, Chris Knox, I’m Managing Director of Forensics with Deloitte.

ALINA M. SEMO: Good morning Chris. Sarah Kotler, do we have you on the phone?

SARAH KOTLER: Yes. Good morning, this is Sarah Kotler, I’m the Director of the Freedom of information at the U.S. Food and Drug Administration.

ALINA M. SEMO: All right. Good morning Sarah. Suzanne J. Piotrowski?

SUZANNE J. PIOTROWSKI: Yup, I’m here. Good morning, everyone. Susan Piotrowski, associate professor at Rutgers University in Newark.

MICHAEL MORISY: Michael Morisy, executive and founder of MuckRock.

ALINA M. SEMO: Okay, good morning Michael. Lizzette Katilius?

LIZZETTE KATILIUS: Hi everybody, good morning. Lizzette Katilius from the Securities and Exchange Commission and I work in the FOIA office for the SEC.

ALINA M. SEMO: Good morning Lizzette. Do we have by any chance Tom Susman? Going once, going twice. He might join us later and not 100 percent sure he could call in. So our loss. Let’s hear from everyone here in person. I’m going to start the end of my table to the right. Which means Jason Baron. Please introduce yourself and remind everyone of your professional affiliation.

JASON R. BARON: I’m Jason Baron, I’m Of Counsel Faegre Drinker law firm here in Washington.

EMILY CREIGHTON: Good morning everyone, my name is Emily Creighton and I’m the Legal Director Transparency at the American Immigration Council.

ABI MOSHEIM: Good morning, I’m Abioye Mosheim the Assistant General Counsel at the U.S. Consumer Product Safety Commission.

JAMES R. JACOBS: I'm James Jacobs, I'm the librarian at Stanford University Libraries.

SEAN MOULTON: Hello, I'm Sean Moulton, Senior Policy Analyst at the Project on Government Oversight.

BOBBY TALEBIAN: Good morning, I'm Bobby Talebian, Director of the Office of Information Policy at the Department of Justice.

KIRSTEN B. MITCHELL: Good morning, I'm Kirsten Mitchell and I'm the designated Federal Officer for the FOIA Advisory Committee meeting.

JAMES R. STOCKER: Good morning. I'm James Stocker, I'm associate professor of international affairs at Trinity Washington University.

JOAN KAMINER: Good morning. I'm Joan Kaminer, Attorney Advisor at the Environmental Protection Agency for Information Law.

RYAN LAW: Ryan Law. I'm the Deputy Assistant Secretary for Privacy, Transparency, and Records at the Department of the Treasury.

LEE STEVEN: I'm Lee Steven, Senior Policy Advisor at Cause of Action Institute.

PATRICIA WETH: Good morning. I'm Patricia Weth, Deputy Assistant Counsel for the National Labor Relations Board.

BRADLEY WHITE: Good morning. I'm Bradley White. I'm the Senior Director of FOIA Litigation and Appeals at the Department of Homeland Security.

ALINA M. SEMO: All right, great. Thank you very much everyone. So at our last meeting on December 6, I introduced to my right Bobby Talebian as the Acting Director of the Office of Information Policy of the Department of Justice and I am now pleased to announce Bobby has been selected as the permanent Director of OIP. So congratulations Bobby. [Applause]

So, I promised a few housekeeping notes. An important reminder to everyone just make sure to identify yourself when you are speaking. Your name and affiliation if you can remember each time. This helps tremendously with our transcript and the minutes of the meeting which are required by the Federal Advisory Committee Act.

Also, again, just keep in mind, there's a delay between the time the mics come off on the stage and the folks come on. So, we have to be patient and as I said earlier, I'll work to check with folks on the phone and if I forget someone will nudge me. So, 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 and 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 anytime by emailing foia-advisory-committee@nara.gov.

Although we have an ambitious agenda today, I am hopeful that at the end of today's meeting we will have time for public comments. I always leave time for that. We do look forward to hearing from any non-committee members for thoughts or comments to share. Jessie Kratz, the National Archives

Historian who is assisting OGIS with many administrative responsibilities with the committee, has been monitoring and will continue to monitor the live stream on the National Archives YouTube channel. At the end we will read any questions that come up. Meeting materials are on the committee's web page and we will make the video transcript available on the webpage as soon as possible. Information about the committee, including member's biographies and committee documents, especially the ones we're talking about today are available on the web page on our website at: [archives.gov/OGIS](https://www.archives.gov/OGIS).

To promote openness, transparency and public engagement, we post Committee updates and information to our website, blog, and on Twitter @FOIA_Ombuds. Please, stay up-to-date on the latest OGIS and FOIA Advisory Committee news, activities, and events by following us on social media.

Thank you again, and in advance, to the following members who have agreed to serve on the Working Group to pull together this Committee's Final Report and Recommendations, if you have changed your mind let me know that as well but I've got: Jason Baron, Sean Moulton, Abi Mosheim, and Patricia Weth. Okay, they are nodding so this is good. Did I miss anyone? Anyone on the phone? If anyone else is interested in working on the break I'm happy to take other volunteers. I see everyone jumping up. So, between now and the May 1 meeting, which is our next meeting, the working group will be hard at work compiling the recommendations that receive approval at today's meeting into a final report. Our goal is to be able to circulate a fairly final draft in advance of our next meeting on May 1. And I would like to use the May 1 meeting to iron out any outstanding issues and take any final votes on outstanding recommendations as needed.

Next we'll need to approve the minutes from the last meeting. Kirsten circulated those by email earlier this week. Later today she and I will certify the minutes to be accurate and complete, which we're required to do under the Federal Advisory Committee Act within 90 days of the last meeting. Do I have a motion to approve the minutes? Thank you. Do I have a second? Thank you Patricia. All present in person in favor of the meeting minutes.

GROUP: Aye.

ALINA M. SEMO: Okay, those on the telephone in favor of the meeting minutes.

PHONE: Aye.

ALINA M. SEMO: Okay, I sort of heard mostly ayes. I heard a grunt. Is anyone opposed either in person or on the phone? Okay, the minutes are approved. We will post them on our website.

So next I'm going to invite Kirsten to the podium. I have asked Kirsten, it's all my fault, to provide an abbreviated version of a presentation she gave earlier this month to Federal records managers that I thought would be of interest to the committee. To save time Kirsten will also update past FOIA recommendations which is normally a topic covered by our Deputy Director Martha Murphy but she is very graciously ceding her time to Kirsten. We promised to keep it short because we know we have a lot of work to do. Kirsten over to you.

KIRSTEN B. MITCHELL: Thank you Alina. I'm Kirsten Mitchell, and in addition to being the Designated Federal Officer of the FOIA Advisory Committee, I'm also the compliance team lead at the Office of Government Information Services, the FOIA Ombudsman's office. Alina asked me to give you this very quick overview of the 2018 records management self assessment which was conducted in 2019. Two of

the questions relate directly to recommendations from the 2016-18 term of the FOIA Advisory Committee. Since 2016, OGIS has collaborated with the Chief Records Officer for the U.S. government on the RMSA. It's a great marriage, if you will, between NARA two programs, CRO, Chief Records Office, has particular expertise in collecting self reported compliance information through the RMSA. OGIS, of course, has particular expertise in FOIA. It's a great partnership given a strong records management program is essential to a successful FOIA program.

One of the side benefits of the RMSA is that it encourages coordination and collaboration between FOIA officers and agency records officers. I'm going to go briefly through the results of the RMSA, but I want to point you to our report which is based on our analysis and observations. It's at archives.gov/OGIS and it is just 11 pages. There are nice graphics that didn't translate well to slides so I encourage you to have a look.

Now, on to the results. Two questions we asked for a second year in a row and the results show an encouraging uptick. We asked "records needed to respond to a FOIA request are readily accessible and located by staff responsible for FOIA, always, most of the time, some of the time, never, or do not know." We found a 13% increase between 2017 and 2018 in agencies that say they can access and locate records necessary to respond to FOIA requests always or most of the time.

During that same period between 2017 and 2018, the percentage of respondents who said they could access and locate records needed to respond to a FOIA request some of the time dropped from 18% to 11%. So that certainly is encouraging news.

For three years in a row, we have asked requesters questions about agency communication with FOIA requesters, although the wording was tweaked after Congress amended FOIA in 2016. The RMSA asked "at what point in the FOIA process does your agency inform requesters of OGIS dispute resolution services?" Respondents could check various options. We're very happy to see that the number of respondents who said that they alert requesters to OGIS services in all cases and responses increased 22% from 2017 to 2018. And we can certainly attest that our caseload at OGIS reflects that.

The 2018 RMSA asked three new FOIA topics including on performance management. We know from our assessments of individual agency FOIA programs that well-managed FOIA programs use metrics to help manage the resources they have and that they regularly report to agency leaders on the metrics. Agencies are all over the map in terms of their reporting, but the good news and a just 3% said that they never report. A note about that 19% that's in the "other" category, those folks responded that they have less formal methods for reporting such as verbally during meetings, posting to the agency's FOIA website, or informing leadership when necessary or upon request.

Our final two areas of questioning evolved directly from the 2016-2018 FOIA Advisory Committee which asked the Archivist to task OGIS with accessing the methods in which agencies use to prepare documents for posting on agency FOIA reading rooms. The good news is 83% said yes, they do have procedures for preparing documents posting in FOIA reading rooms. For you math wizards out here this is not archival math and the percentages are rounded up and we recognize that it's more than 100%.

We asked a follow-up question and that is, "Who is responsible for preparing documents for posting?" And this is a particularly important question because we have heard some agency FOIA professionals who were challenged by this duty in the face of reduced resources and an increased number of

requests. This information is important to us because it forms the foundation for our assessment which we officially launched earlier this month. My NARA colleague Meredith Doviak is assisting OGIS with this assessment which we hope to publish later this year.

Finally, the RMSA asked, “Do your agencies employ performance work plans and appraisals include FOIA performance measures for non-FOIA professionals to ensure compliance with the requirements of FOIA?” This also grew out of the 2016-18 term of the FOIA Advisory Committee which recommended in 2018 that the Archivist direct OGIS to examine the use of FOIA performance standards and submit the results of the assessment and any recommendations to Congress and the President. We are not surprised that agency employee performance work plans and appraisals generally do not include FOIA performance measures for non-FOIA professionals but we’re very happy to have this baseline data and it, again, forms the foundation for another assessment that OGIS is officially kicking off later this spring.

So real quickly, the 2019 RMSA, which is currently going on now, asks five FOIA questions. They deal with FOIA training, who at agencies review FOIA responses before they go out, deduplication of records, availability of records on FOIA websites, and Section 508 compliance providing access to records to people with disabilities.

I want to quickly mention one other recommendation from the 2016-18 FOIA Advisory Committee and that’s regarding the Chief FOIA Officers Council Technology subcommittee which was formed in 2018 in response to a committee recommendation. The Chief FOIA Officer’s Technology subcommittee has been promoted to a committee, it is no longer a subcommittee and will continue. Stay tuned to OGIS’s blog for more information about that in the coming weeks. I’m happy to take any questions, if anyone has any.

ALINA M. SEMO: Anyone on the phone have questions for Kirsten?

KIRSTEN B. MITCHELL: Thank you. I urge you to read the report. [Applause]

ALINA M. SEMO: Thank you, Okay, as we get started today I want to point everyone to the FOIA Advisory Committee webpage where all the draft recommendations can be found. They’re also in the folders for the folks who are here and the folks on the phone, I believe, Kirsten emailed them all to you including a last minute revision by Suzanne Piotrowski. Suzanne, I’m not calling you out just calling attention to the fact that you proposed a revised recommendation 3A? B? I can’t remember. I’m sorry. 3C!

Yes, so I was going to ask the A/V folks to bring up the website, but they did, so thank you. Great.

So, a few comments before moving to the discussion of the draft recommendations. First, I want to remind the entire committee, and each of the three subcommittees that our Charter specifically states that our objective is to study the Federal FOIA landscape and make recommendations to the Archivist of the United States. Any recommendations that the committee ultimately submits to the Archivist have to be ones that the Archivist has legal authority to act on. So, for example, the Archivist has the ability to instruct agencies how to run their records management programs. He is statutorily tasked with that, but he does not have jurisdiction to tell other agencies how to run their FOIA programs. So we’re going to need to talk about how the recommendations are cast today and look at them carefully.

From my personal experience during the 2016-2018 term of the committee, several recommendations that were advanced by the subcommittee, such as agencies should do XYZ with regard to FOIA, which are fantastic by the way. Unfortunately or fortunately, they ended up as best practices or in some limited circumstance tasks for OGIS to do under the direction of the Archivist. So you heard Kirsten talk about that we're working on some of the items that we have already been tasked with, and we're happy to do that, but I want to remind you we have a limited staff. We're already stretched thin doing the work Congress tasked us to do so be kind to us as you think of how many things OGIS should be doing. Again, we're very happy to help as much as possible. So, our goal for today is to ask ourselves, is this a recommendation that is actionable by the Archivist and/or is the recommendation something that someone else can accomplish, for example, as I mentioned OGIS or OMB or OIP, and if they're willing to do it. I don't want to put Bobby on the spot. So, please keep all of that in mind moving forward today.

I'm going to ask the Records Management subcommittee to go first. We have discussed the recommendations at two prior meetings, both September and December 2019. So I thought it makes more sense to go through them first and try to take votes after some discussion. I'm looking at Ryan and Sean has a question.

SEAN MOUTLON: Sean Moulton, Project on Government Oversight. So, I've been thinking about the recommendations to the Archivist and I wanted to at least raise the possibility that we may be looking at the mission statement and taking that a little too far in terms of "make recommendations to the Archivist" because we can make recommendations and we obviously have to give them to the Archivist, but at the start of a document, I would think we could say for any recommendations that we are recommending action by another party, we expect the Archivist to simply deliver those recommendations. I think it's so limiting if we are looking at FOIA and trying to be an advisory committee on how to improve FOIA to limit ourselves to actions that just the Archivist can take or just OGIS can take is very constraining and so, if there's a way to re-examine this constraint, I would certainly encourage it because certainly we can write the recommendations we recommend the Archivist say each time, but I think it would be easier in sort of a drafting or structural way to have the recommendations be directed at whoever it is we want the action taken. And that earlier in the document we just explain that we're delivering the Archivists as required under statute and want them conveyed. I don't know if others have thoughts.

ALINA M. SEMO: Thank god you're on the working group, Sean. You get a chance to craft that any way you want. I have heightened sensitivity to it only because we inherited the 2016-2018 report and we needed to take action because that's what is expected of us. I want to make sure that there are things that really can be done. So they're not pie in the sky necessarily, but deliverable. Ryan.

RYAN LAW: This is Ryan from Treasury. Sean's point is well-taken. I think as we get into the discussion of Records Management recommendations, I think we have some examples where we thought about that very problem and considered what the Archivist can do in relation to OIP and OMB and others.

ALINA M. SEMO: Okay, great. Thank you. Patricia?

PATRICIA WETH: Patricia Weth at NLRB. I have more of a procedural question. I noticed in looking at the Records Management and Time/Volume recommendations, some of them have similar themes and overlap. So I'm wondering, as we go through the Records Management do we pull in some of the Time/Volume ones that can be incorporated? Is that something we can do?

ALINA M. SEMO: Great question. We were actually talking about that amongst ourselves earlier this week. What I would like to propose is that to the extent that it strikes anyone that some of them are similar we can certainly bring them up, that way it will be reflected in today's meeting. But, I also felt as though this is something that the working group could work through as we pull together the report, if we see overlap. I'm looking at my working group members, Patricia! And I thought that we could try to strike similar themes and not necessarily bucket them by subcommittee. And I agree, there's definitely overlap. And Kirsten actually did a valiant job of trying to put them in buckets earlier this week. Thank you for that. And we'll definitely be using that as we work through the draft.

KIRSTEN B. MITCHELL: We'll share that with the committee.

ALINA M. SEMO: So thank you for that point. Anyone else have questions? I just wanted to quickly go through the voting procedures. They are found in your packets. Briefly any member of the committee can vote on recommendation or can move, rather, to take a vote. Does not need to be seconded, but we seem to like that around here so keep that going. The vote can pass by unanimous decision, which is when every voting member, except abstentions, is in favor of or opposed to a particular motion. General consensus is when at least two-thirds of the total votes cast in favor of or opposed to a particular motion and general majority, when a majority of the total votes cast are in favor of or opposed to a particular motion. In the event of a tie, we will reopen the discussion and the committee will continue to vote until there's a majority or until we're very hungry and want to go to lunch. As a reminder, any member can make a motion. If you are in favor of a recommendation, I would like to take a voice vote since we have folks on the phone. If you are for a recommendation please say "aye." If you are against a recommendation please say "nay." If you want to abstain, please say "abstain." And Kirsten will be recording the votes.

So today you may have noticed on the agenda we did not allocate specific timeframes for each of the subcommittees as we have in previous meetings. We thought we would let the discussion be a little more free flowing. If you have time, if one subcommittee set of co-chairs has time and wants to cede to another subcommittee that's great. There's no break in the agenda, but I do promise to take one at a logical point. And Kirsten is pointing out to me that it's supposed to be at 11:20 but we'll see where we are at 11:20. So, I'm going to ask Jason Baron and Ryan Law to please kick us off with the Records Management subcommittee unless there are any other questions. Folks on the phone or are you guys good?

PHONE: Good.

ALINA M. SEMO: All right, thanks.

JASON R. BARON: Okay, thank you Alina. Jason Baron. I just want to say some introductory remarks and then Ryan will walk through the nine recommendations of the subcommittee. Our subcommittee wants to emphasize that under the leadership of Archivist David Ferriero, the Archives has a strategic plan that says that the core mission of the Archives is to provide public access to Federal government records to strengthen our nation's democracy. And the Strategic plan also supports NARA's vision as an agency known for cutting edge access to extraordinary volumes of government information. NARA has six transformational outcomes and it embraces the primacy of electrical information. NARA's strategic goal in that plan is to "make access happen."

So, we see a unified view by the Archivist and by NARA of access and preservation of records and we think that's important for the final report. We also recognize that under Archivist Ferriero's leadership both for the last decade, through the 2012 Managing Government Records Directive and the 2019 Transition to Electronic Records Memorandum jointly issued by OMB, that there's a recognition of a reflection point in 2022 where the Archives is looking forward to a future of going digital. I think that is very important when evaluating the recommendations of the subcommittee. So we have an eye towards the future. I believe many of these recommendations would be characterized as visionary as well as some of them as more practical. With that, I turn it over to Ryan.

RYAN LAW: Thank you, Jason. This is Ryan from Treasury. Good morning, everyone. As Jason mentioned the goal of our presentation today is to talk about where we are going from here. I wanted to take just a brief moment to talk about where we were and then talk about where we are now and then we will decide where we go from here.

So, today we plan to bring to the committee vote nine recommendations from the Records Management subcommittee. We first introduced our recommendations to the full committee in June of last year. During the September full committee meeting we discussed recommendations 1-7 at length. We saw an input in feedback from each of you and from the public. During the committee meeting in December we discussed two additional recommendations. Since that December meeting our subcommittee has met twice and we worked diligently to incorporate your feedback and input.

At this point, all members of this committee and the public, have had an opportunity to read and provide feedback on the nine recommendations. I want to thank everyone for their kind and candid input. Your feedback has helped the committee sharpen and focus our recommendations. I also want to thank and recognize Jason Baron who has served, maybe against his will, as our master wordsmith. I also want to thank Alina and Bobby who have made themselves available to the subcommittee throughout the process. I also want to thank Kyle Douglas in the Office of the Chief Records Officer, who served as our liaison in that office and has been very helpful in getting us answers that we have sought through this process. And finally, Wendy Couch and Ron Swecker, who are two records management leaders in Federal agencies that helped us engage with the Federal records officers network as part of our engagement with the Federal community. So our subcommittee work is nearly at an end. Procedurally for today, my plan is to read each recommendation individually, and then pause to give members an opportunity to ask questions or provide feedback.

We'll then give subcommittee members an opportunity to respond to the questions and feedback. And if those issues are satisfactorily resolved or if there are no more questions or comments, we will request a full vote on the committee for each recommendation. So we'll repeat that nine times and then we're done. It will take about two minutes, hopefully. [Laughter]

ALINA M. SEMO: Ryan, I just wanted to point out James Jacobs, Lee Steven, Tom Susman, and Bradley White are the other subcommittee members. So, ask any pointed questions towards them.

RYAN LAW: And I apologize to the subcommittee. I should have recognized you and thanked you for all your hard work and dedication throughout this process. You have brought diverse perspectives to this unique problem that we're facing and you've come up with a good set of recommendations. I'll let you be the judge of that, so to kick off our recommendation one.

Do we have slides or anything? Okay, everyone has the recommendations in the packet. I would ask you to search out the bolded words on the page. So, we're going to look at recommendation one: "We recommend the Archivist request that the Department of Justice, Office of Information Policy (DOJ/OIP), issue guidance to require agencies to include records management-related materials as part of agency websites and FOIA handbooks maintained pursuant to FOIA." I'll pause now to see if there are any questions or comments from the group, and including folks on the phone.

PATRICIA WETH: NLRB. I don't know if it's a good time to point out that Time/Volume has some recommendations that overlap with this one, but I don't know. Do you want us to point it out now or wait until Time/Volume speaks?

ALINA M. SEMO: I'm going to look at Jason and Ryan. What do you want to do?

RYAN LAW: I think we're open to it.

EMILY CREIGHTON: Emily Creighton, American Immigration Council. I wonder if we were generally to support recommendations and also support a Time/Volume recommendation if we were to assume that the spirit of those recommendations would be included in a combined recommendation at a later date, and maybe some of the conversation around how they're ultimately tailored or edited. That could happen a little bit later, but I just wanted to say if we are generally in favor I'm not sure we need to worry about overlap at this point. I don't know if others agree.

BRADLEY WHITE: I want to second what Emily just said there and in particular since Alina, you mentioned that Kirsten is already working to create buckets to see where they fall together. So, this looks like something that is definitely bucketable at a later point.

ALINA M. SEMO: We do love buckets in the Federal government, don't we? All right.

JASON R. BARON: Can I also add to what Ryan said in the bold print, we request for DOJ to take some action with respect to guidance to agencies on records management. We do have an alternative or a supplemental point in this recommendation, which is that, to the Archivist, and under the Federal Records Act and under related authorities under Title 44, the Archivist has, as I mentioned, worked jointly with OMB to issue guidance in the past. And, part of this recommendation is also making the suggestion that through the vehicle of the Federal Records Act and the other authorities under Title 44 that the Archivist might wish to consider acting to issue guidance directing Federal agencies to do two things. One is to undertake their review of policies, procedures, and directives with respect to records management. And to publish these materials online in one or more places including web pages devoted to records management or FOIA pages. So that is part and parcel recommendation one.

ALINA M. SEMO: Joan, I think you wanted to ask a question.

JOAN KAMINER: Joan Kaminer, EPA. In drafting recommendation did you consider a carve out for sensitive intelligence community file plans? Because I didn't notice the possibility for an exception for certain categories of information. This wouldn't be limited to intelligence community agencies, but I think certain categories of records.

JASON R. BARON: I think that's a valid point and we could certainly make a reference in this document or in the final document out of the full committee. And would say that, of course, that would be ultimately how that's framed would be ultimately up to DOJ and to the Archivist.

JOAN KAMINER: Thank you.

ALINA M. SEMO: Thanks Joan. Any other comments on the phone or questions on the phone? Ryan, should we move to vote?

RYAN LAW: If there are in other comments we'll move—procedurally should I move that we move on recommendation one?

ALINA M. SEMO: Yes, that would be great, do we have a second? Thank you, James. All in favor of recommendation one going forward please say aye.

GROUP: Aye

ALINA M. SEMO: All opposed, say nay. Anyone abstaining? Folks on the phone, I didn't hear an aye. Can I hear an aye?

PHONE: Aye.

ALINA M. SEMO: That sounded like everyone. Anyone abstaining?

BOBBY TALEBIAN: I will continue to abstain given OIP's role in the recommendations.

RYAN LAW: Can we ask those on the phone if there are any nays?

ALINA M. SEMO: Any nays on the phone? No? I think we have now passed our first official recommendation and we should be very excited. Good job everyone. Want to go on to two?

RYAN LAW: Thank you everyone. Moving along, and we're passed two minutes, I'm sorry. Recommendation two: "We recommend that the Archivist of the United States direct NARA and request that DOJ/OIP offer targeted training in selected topics in Federal records management to FOIA officers and FOIA Public Liaisons in Federal agencies, and otherwise include a FOIA module in selected records management training courses open to all Federal employees." We will pause for any questions or comments about that particular recommendation.

ALINA M. SEMO: Any comments or questions on the phone? Very quiet.

MICHAEL MORISY: This is Michael Morisy. Is there current similar analogous training that the Archives offers that would kind of adapt from or is this a different program?

JASON R. BARON: NARA offers a great variety of training, increasingly online. I know I had the experience when I was director of litigation to offer a course in records management to lawyers that took place for many years. However, as we note in the body of the text accompanying the recommendation, that NARA does not however offer a specific course targeted to FOIA staff. And we don't have statistics government-wide on how many Federal employees engaged in FOIA-related functions have undertaken the either face-to-face or online records management training. This would be an add on to what NARA does and what DOJ offers, so that there would be a crossover, again, a unified theory that if you're handling government records, if you're a FOIA officer or in the record space, you should know about both statutes. About FOIA and the Federal Records Act.

ABI MOSHEIM: This is Abi, Consumer Product Safety Commission. I'm wondering if you have to have DOJ/OIP offer the training or if you could require the agency records officers and senior agency officials for records management provide targeted training within their agency to FOIA staff on an annual basis?

BRADLEY WHITE: Bradley White, DHS. Isn't the idea behind this is that we kind of wanted something consistent across all of the government so that everyone is receiving the same kind. I definitely think that it's a great idea that individual agency's records management should do it, but I also think that not every agency's records management program is as fully developed as, say, NARA's would be.

RYAN LAW: So, when we looked at this issue we looked at agency chief FOIA officer reports and other sources to determine what training was made available to FOIA staff. The questions currently focus on FOIA training and we couldn't find any evidence that there was specific training for FOIA staff on records management. Now, there's a government-wide requirement, I think A-130 requires that all agencies provide standard training for records management.

What we're really looking at here is training targeted for FOIA professionals because it's our subcommittee feeling that, as Jason said, there's this cross pollination that should happen there. FOIA staff can do their jobs better if they understand Federal records management processes. And we couldn't find any agency that specifically called out that they were doing records management training specifically for FOIA staff to help them do their jobs better. That's what we have targeted here.

ABI MOSHEIM: Abi, Consumer Product Safety Commission, again. So, I guess if you do have DOJ/OIP offer the training would you incorporate records management into existing DOJ training? I just know I wear both hats records management and FOIA. My FOIA staff I require that they attend at least one DOJ training a year, to get them to go to separate ones I'm not sure about? Maybe in the basic one, you could incorporate the records management element?

RYAN LAW: This is Ryan. I think how it is implemented, it would be up to OGIS and OIP. But I think that would make a lot of sense. I think there are some standard training templates that OIP provides and Bobby's staff is really great at coming to Federal agencies, they are coming to mine in a couple of weeks to train our staff on some topics under the FOIA. I actually have my records management staff providing training to that group of FOIA professionals there. So, I think that's certainly an opportunity to create a standard template for in-person training. Additionally, as we move into a more digital environment, developing a standard training that agencies can provide to staff, particularly those folks that are not located in the D.C. area, I think there's a need for that.

ALINA M. SEMO: Thank you. Anyone else on the phone have questions or comments? Anyone around the table? All right, shall we vote on recommendation number two to keep to Ryan's two minutes? Do I have a motion?

RYAN LAW: I'll move that we vote on recommendation two.

ALINA M. SEMO: Do I have a second? Thank you. All in favor recommendation two please say aye.

GROUP: Aye.

ALINA M. SEMO: And folks on the phone, aye?

PHONE: Aye.

ALINA M. SEMO: Anyone, against, please say nay. Anyone on the phone want to say nay? Very quiet. Anyone abstaining?

BOBBY TALEBIAN: One abstention.

ALINA M. SEMO: One abstention. Duly noted. Well, thank you, again, we have just passed our second recommendation! Very proud.

RYAN LAW: Excellent. Thank you. Moving along. Moving to recommendation three, we're on page six of our handout, highlighted on a bolded text in the middle of the page. Recommendation three: "We recommend that the Archivist of the United States request that DOJ/OIP provide further best practice guidance on the use of e-discovery tools to assist agencies in meeting their obligations to conduct an adequate search of electronic records, including but not limited to email in Capstone repositories."

JASON R. BARON: Maybe I should just say for the greater community that Capstone repositories is a policy promulgated by NARA that is voluntary for the Federal government, but Federal agencies in managing their email can elect to preserve email for senior officials, permanently, and apply general records schedule 6.1 to remaining employees for email being preserved for seven years and the goal of the policy was to make possible the 2016 mandate contained in the 2012 directive and then echoed in the 2019 directive from the Archivist that agencies manage both their permanent and temporary email in electronic form.

RYAN LAW: Any questions or comments from folks here or on the phone? Alina, I will move we vote on recommendation three.

ALINA M. SEMO: Thank you for the second. All in favor of recommendation three, please say aye.

GROUP: Aye.

ALINA M. SEMO: Folks on the phone I heard one aye, anyone else?

PHONE: Aye.

ALINA M. SEMO: I think that was all of them. Anyone against recommendation number three, please say nay? Anyone on the phone, nay? Okay, any abstentions.

BOBBY TALEBIAN: I abstain.

ALINA M. SEMO: Okay, duly noted. Thank you, we just passed recommendation three. Thank you very much.

RYAN LAW: Thank you everyone. I'll just note, we're getting a little bit more efficient as we go. So that's great. Recommendation four, moving to page eight: "We recommend that as part of the Federal Electronic Records Modernization Initiative (FERMI), the Archivist of the United States direct NARA to incorporate and further develop the idea of public access to Federal records, including through FOIA." I'll pause for questions or comments here and on the phone.

ALINA M. SEMO: Anyone on the phone, comments or questions?

RYAN LAW: I will move that we vote on recommendation four.

ALINA M. SEMO: Okay. Do I have a second? Thank you. All in favor, please say aye.

GROUP: Aye.

ALINA M. SEMO: On the phone I heard one aye, can I hear the others?

PHONE: Aye.

ALINA M. SEMO: Okay, any nays on the phone? Okay, any nays on the committee folks around the table? Any abstentions?

BOBBY TALEBIAN: Abstain.

ALINA M. SEMO: Okay, so recommendation number four has passed.

RYAN LAW: Thank you everyone. Moving along to recommendation five bottom of the page: "We recommend that the Archivist of the United States make a formal request to the Chair of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) that CIGIE consider designating as a cross-cutting project or priority area the issue of how agencies are doing in providing FOIA access to agency records in electronic or digital form." I'll pause for questions or comments. [Beeping]

ALINA M. SEMO: Did we have someone join us on the phone?

MICHAEL MORISY: This is Michael. I just dropped off.

ALINA M. SEMO: Hello Michael, welcome back. So, we're on recommendation number five and we're soliciting questions or comments from the phone. Silence. Anyone around the table? Questions or comments?

RYAN LAW: Sorry, was that a sneeze [laughter]? Okay, so Alina, I'll move to vote on recommendation five.

ALINA M. SEMO: Okay, second? Thank you Bradley. So let's vote on recommendation number five. All in favor, please say aye.

GROUP: Aye.

ALINA M. SEMO: I heard one aye on the phone. Can I hear any others?

PHONE: Aye.

ALINA M. SEMO: Okay, anyone opposed to recommendation number five, please say nay. No nays around the table. Any nays on the phone? Okay, any abstentions?

BOBBY TALEBIAN: Abstain.

ALINA M. SEMO: All right, recommendation number five is passed. Doing great.

RYAN LAW: Thank you, everyone we're almost there. Moving to recommendation six, page 10: "We recommend that the Archivist of the United States direct NARA and request that DOJ/OIP each establish a liaison with the newly created Chief Data Officer (CDO) Council, for the purpose of ensuring that CDO officials understand the importance of Federal recordkeeping and FOIA requirements and how such laws apply to the maintenance of data within agencies." I'll pause for questions or comments.

ALINA M. SEMO: Okay, anyone on the phone have questions or comments?

RYAN LAW: I'll move to vote on recommendation six.

ALINA M. SEMO: Any seconds. Thank you, Bradley. Let's take a vote on recommendation six, all in favor, please say aye.

GROUP: Aye.

ALINA M. SEMO: On the phone, can you hear you say aye?

PHONE: Aye.

ALINA M. SEMO: I heard three, any other ayes on the phone?

PHONE: Aye.

ALINA M. SEMO: Okay any nays on the phone? Any nays around the table? Okay, any abstentions?

BOBBY TALEBIAN: Abstain.

ALINA M. SEMO: All right recommendation six is passed. Thank you. Moving right along.

RYAN LAW: Excellent. Moving to recommendation seven, page 11: "We recommend that the Archivist of the United States work with other governmental components and industry in promoting research into using artificial intelligence (AI), including machine learning technologies, to (i) improve the ability to search through government electronic record repositories for responsive records, and (ii) segregate sensitive material in government records, including but not limited to material otherwise within the scope of existing FOIA exemptions and exclusions." I'll pause here for questions or comments.

ALINA M. SEMO: This is Alina Semo. I have a question. Should I be reading OGIS in there?

JASON R. BARON: As the delegate of the Archivist?

ALINA M. SEMO: Right. To work with other governmental components.

JASON R. BARON: I certainly hope that OGIS could support this and whatever resources you have, but I think there are others within NARA, from my experience, that might be well placed to make that liaison happen since NARA has historically had a research arm that provides a liaison to the NSF community, and to the scientific community and other councils of government, and awarding grants and other programs that promote cutting edge technologies. So the answer is, of course, OGIS should be involved as part of these recommendations, but I think we can embrace other parts of NARA to have that liaison.

ALINA M. SEMO: Okay. Thank you.

EMILY CREIGHTON: I have a quick question and apologies, I have not read all of the materials that are cited here in the explanation around the recommendation. My question is around subpart two where the Artificial Intelligence, the use of Artificial Intelligence might be used to segregate sensitive materials. Can you explain a little more how you envision that happening for Artificial Intelligence? I guess my concern is how an Artificial Intelligence system would determine what exemption should be applied? I guess maybe I don't fully understand that piece of it.

JASON R. BARON: Short answer is yes, with human input, of course. The question here is, us in the legal community, we face this with privilege issues as well as responsiveness issues. So, the first of the two points is that records could be classified either as responsive or not to a FOIA request just like they could be classified by machine learning algorithms as responsive or not to any discovery request or any kind of request that involves text classification. The point that you're raising is the sensitivity one and part of sensitivities in government, PII, that are reflected in Exemptions six and seven, particularly. Exemption four involves confidential proprietary information. Those are only some of the ways that one can tease out sensitivity in records.

It is cutting edge to suggest that a machine learning algorithm would successfully be able to determine what is a deliberative process document under exemption five, but I believe there are strategies to do so. And so the exemptions under FOIA are a subset of all of the sensitivities in government records that would be of interest, I think, to the greater scientific community, but what I have not experienced in any discovery, these tools are in the beginning stages of figuring out privilege issues which are subsumed within exemption five. But there are easier tasks for machine learning such as expressions like Social Security numbers and other forms of numeric information that's sensitive that are within FOIA exemptions that are easily accommodated under existing tools and technologies.

The thing is though, that the greater commercial sector has not really focused on FOIA as something that would be of interest. Yet, I can tell you that there are any number of solution providers in the space that have expressed some interest in FOIA technologies. So, to make this successful, I think the government should promote the idea of using machine learning to make more efficient the FOIA process and to use whatever available research and industry notions there are to advance the cost.

EMILY CREIGHTON: That's extremely helpful and to the extent on the requester side, I've worked with agencies that do have machine learning available and some do not. I think the piece about how exemptions are going to be applied would be something, and I don't know what language could be used here, but something along the lines of "successfully segregate" or something where we're just acknowledging that is, someone from the requester community seems like a leap and potentially rife with problems around over-redacting and over-exempting materials. But, I'm not as familiar with some of the programs that exist so I just want to put that out there.

JASON R. BARON: I think that's a valid point, but I would say that the intent here is to always have a human in the loop. We're not suggesting that an algorithm is employed to make decisions for an agency for FOIA purposes that then need to be defended both by the agency and lawyers in court. I think there's always going to be a need for some kind of quality control check and for humans, people, FOIA officers and others, to be training the algorithm and to be involved in every step of the process.

EMILY CREIGHTON: And I'll just say, I think that for those that are not as familiar this background material is helpful. And so in the recommendation, to the extent that there's an acknowledgment of the human component, I think that would be helpful to those who, you know, might be slightly taken aback by just the Artificial Intelligence piece and the suggestion that that would be how things would be—

RYAN LAW: [Interposing] This is Ryan. Let me add to this, Emily, and to Jason's point. The goal is not to outsource FOIA processing to a computer. The goal is to explore how tools that are currently being used by the private sector widely, can be employed in the public sector to ease FOIA processing. That would have the effect of having FOIA analysts, people looking at the words on the page and applying

redactions, to move from low value to high value work. Instead of redacting privacy information or Social Security numbers, which a computer can do easily, focusing on a deliberative process and classified information and other things that require human touch, so to speak.

EMILY CREIGHTON: That's very helpful.

RYAN LAW: So, again, don't want to replace anyone. We want to get the best tools that are available.

EMILY CREIGHTON: And just for the record, to the extent that I have seen that working from the agency, it has been helpful in our FOIA litigation.

SEAN MOULTON: Sean Moulton, Project on Government Oversight. So, I would suggest to reflect this slight wording change to that subpoint 2. Right now, it reads, "segregate government materials in government records." Maybe it would reflect if it said, "identify sensitive material in government records for potential segregations" So the machine is identifying the stuff but the segregation is going to be done by someone reviewing that.

ALINA M. SEMO: So, you would strike "segregate" and substitute "identify."

SEAN MOULTON: I would strike "segregate" and say, "Identify sensitive material government records for potential segregation." So I would add those three words.

RYAN LAW: Are you okay with that?

JASON R. BARON: I am.

RYAN LAW: Looking at my other subcommittee members quickly. We will have minutes of this meeting so I didn't write down exactly the words you said, but Kirsten is nodding that she will ensure that it is exactly as you have said so with that in mind, Alina, do you think it will be appropriate to move for a vote. If there are no other questions.

JAMES R. STOCKER: This is James Stocker, I want to be sure I like this new wording and I think it's a nice idea. I want to make sure I am reading this correctly, as "only seeking to promote research." It's not actively advocating that it be adopted at this point, so we're just promoting research with this, right? It's a relatively limited recommendation as it is how I read this.

JASON R. BARON: I think that's right, but I hope that over the next decade that the research would have translated into practical effect for dozens and dozens of agencies that are experiencing long queues and high volume FOIA requests, and I think it could be extraordinarily helpful to have these algorithms tuned to FOIA.

BOBBY TALEBIAN: I wanted to provide a comment and completely agree with everything that Jason and Ryan said in this recommendation in line with how we handled exploring e-discovery tools over a decade ago. And this is very much in line with what we were focusing on at OIP now. So far in my office piloted one tool and we will continue to pilot them to find and build the case for how they can improve efficiencies. So with that said, for e-discovery tools, we did a pilot first. Then when we found the benefits and the best practices and how to use that, and then we encourage agencies to explore them. And something similar could be done here. That said, I'm just throwing in that OIP and DOJ are already working on this and are happy to work with NARA as well.

ALINA M. SEMO: Thank you.

RYAN LAW: Other questions and comments on the phone as well?

PATRICIA WETH: This is Patricia Weth from NLRB. Again, I'm supportive of this recommendation. At my agency we have been trying to explore Artificial Intelligence on our own, so to have it done across different government agencies, I think it would be very helpful to all of us.

RYAN LAW: Thank you.

ALINA M. SEMO: Ryan, if you are going to move for recommendation seven just with the word change everyone is clear, in subpart 2 it would read "identify sensitive material in government records for potential segregation including, but not limited to material otherwise within the scope of existing FOIA exemptions and exclusions." Do you want to move?

RYAN LAW: I will move that the committee vote on recommendation seven as amended?

ALINA M. SEMO: All in favor?

GROUP: Aye.

ALINA M. SEMO: Folks on the phone in favor?

PHONE: Aye.

ALINA M. SEMO: Folks on the phone, anyone nay? Okay, folks around the table, anyone nay? Any abstention?

BOBBY TALEBIAN: Abstain.

ALINA M. SEMO: All right, recommendation seven is passed.

RYAN LAW: Excellent. Thank you, everyone. Alina how are we doing on time?

ALINA M. SEMO: Doing great, she says optimistically.

RYAN LAW: Very good.

JASON R. BARON: We're doing great on both time and volume. [laughter]

RYAN LAW: Okay, we're going to try to hold the puns today there Jason. Moving to recommendation eight, page 12: "We recommend that the Archivist of the United States request that NARA/OGIS work together with DOJ/OIP to encourage agencies to work towards the goal of collecting, describing, and giving access to FOIA-released records in one or more central repositories in standardized ways, in addition to providing access on agency websites." I'll pause for questions or comments.

JOAN KAMINER: I have a question.

ALINA M. SEMO: Sure, Joan?

JOAN KAMINER: Joan Kaminer, EPA. Going back to what, I believe, Sean said at the beginning of the meeting about opportunities to possibly strengthen some of the recommendations so they are more than, "requesting" or, you know, "conducting studies" such that something more active. I think this is

one that is definitely prime for more of an active, potentially effective wording, and I wanted to open that up for conversation possibly “directing,” and I’m not sure how that would work, but just taking Sean’s point earlier, if we might be able to revise to strength in it. Because I fully support this recommendation.

ALINA M. SEMO: So I’m clear you would substitute “request” for “direct?”

JOAN KAMINER: I wanted to open up the discussion for rewording.

JASON R. BARON: So, we have had discussions within our subcommittee and I invite members of the subcommittee to weigh in but my understanding was that the wording was carefully constructed to account for those agencies that might consider it a tremendous burden to move towards, both cost and resources, to move towards the goal of this in any short-term way. Having said that I open it up for others.

BRADLEY WHITE: Bradley White, DHS. Everything he just said. As a request it is absolutely something that the largest recipient of FOIA requests in the Federal government would be willing to look into, but as a directive, as in telling us to place all of our nearly 500,000 FOIA requests in one spot or all of the massive amounts of data we collect for everything in one spot would be incredibly cost prohibitive. But if we could look at giving access to categories of those records or not just the frequently requested ones, but you can tell what people really want to look at. The way it is written now is something that would absolutely work for us and I could vote for and I would have to vote against it if we strengthened the language.

JOAN KAMINER: Joan Kaminer again. DHS uses *FOIAonline*, correct? But for limited categories of information.

BRADLEY WHITE: Only for CBP, so the vast majority of DHS does not.

RYAN LAW: So, this is Ryan. These are both important points and the burden on an agency is something that we thought about. One thing we talked about in the language in the recommendation says to post documents in standardized ways. So we looked to existing guidance for agencies and what we found was that there’s guidance from OIP, agency websites 2.0, and it talks about agencies posting documents with certain metadata in a uniformed style. And our recommendation around standardized in the way that agencies post materials in a centralized location either on the website or in a portal of some fashion.

Posting them in a standardized way would allow agencies or in the future, you know, groups or organizations that are creating standardized libraries doesn’t necessarily need to be the Federal government to capture that metadata and set up a search engine could troll across multiple agency sites to locate documents that are tagged with certain metadata. So, our recommendation focuses on standardizing the way agencies post information on websites could get us most of the way there. But, we recognize that requiring agencies to post documents creates a tremendous burden, which previous committees here have examined, the issues of 508 accessibility, it being one of those issues that the committee has looked at.

SEAN MOULTON: This is Sean Moulton, POGO. I am fully aware and sensitive to the burden of agencies and especially the more medium-sized agencies who don’t put a lot of FOIA resources in their office and

this might be burdensome, but I will point out that the wording we have right now for the recommendation has sort of two qualifiers to that. One is that the DOJ or NARA and DOJ encourage agencies. So we're talking about possibly making that direct. But, right after that, it's not that agencies collect and normalize everything it has worked towards. Even if it was direct, it would simply be directing agencies to work towards a better system and a more comprehensive system. But it wouldn't be directing them to all immediately come up to a similar standard and spend all of their budget on getting their systems online. So, just pointing that out. I don't think if we strengthen the word from "encourage" to "direct" or some other verbiage there, I still don't think it would be a requirement that the agency meet some sort of standard.

ALINA M. SEMO: Bradley, any thoughts on that?

BRADLEY WHITE: It's still identifying the end goal, which again is not something that I can support.

ALINA M. SEMO: I'm sorry, I just want to give folks on the phone a chance to chime in if anyone is interested in commenting on this very lively dialogue we're having.

MICHAEL MORISY: This is Michael. I think the current language is a good starting point and I think seeing if it has an effect and a better understanding of the challenges and encouraging and understanding that different agencies have different requirements especially with DHS's specific examples.

ALINA M. SEMO: Thank you. Emily?

EMILY CREIGHTON: Emily. I was just thinking, can you talk about the FOIA Improvement Act language having some of this directive language, potentially? And maybe there already being a statutory requirement?

JASON R. BARON: My understanding is that there's not a statutory requirement for this kind of envision repository government-wide.

RYAN LAW: The form in format also missing from the Improvement Act.

EMILY CREIGHTON: But there is in a way saying that there has to be a way? I'm just curious if that's the framework that we're working with and this is the recommendation that's helping us get to this statutory mandate in a way, I don't know that we should be afraid of more emphatic language.

BOBBY TALEBIAN: I think this goes beyond the statutory mandate to post records under section (a)2, as in the law doesn't define how we would post them, the standards for posing or where they would be posted. So, I think it goes beyond that recommendation.

BRADLEY WHITE: Bradley White. We generally seem to interpret this as requiring the posing of frequently asked records to our FOIA library or FOIA reading room which would be agency-specific as opposed to the central repository.

RYAN LAW: Comments or questions from the phone as well? Abi?

ABI MOSHEIM: Abi, Consumer Product Safety Commission. So you are thinking, as far as a central repository across the government, would that be something like FOIA portal? Would everyone put their records there?

RYAN LAW: So this is Ryan. So, we have looked, as part of our review, at what agencies are currently doing and we found that some agencies have already established centralized portals. Agencies that utilize FOIA online, sometimes use the public portal there. The State Department has a centralized library where their documents are posted in a searchable format with metadata associated with it. So we found some agencies doing that and some agencies are doing it very well. Standardizing it could result in future years in either someone private or an agency in the public developing a centralized database whether it be on FOIA.gov or another place allowing us to search across agency websites to find documents. The key here is that agencies post them in a standardized format with metadata would allow that.

EMILY CREIGHTON: Emily. One last comment, and maybe Bradley, since you are working with an agency the receives such a large number of FOIA requests if it were worded this way could we imagine how the agency is respond, and when we talk about encouraging agencies, speaking for myself only, it would be helpful to understand how a recommendation like this would be received by the agency and what steps might be taken, if it had language like “encourage.”

BRADLEY WHITE: Bradley White again. So, I would read this as something like there could be a repository and then we could link to our own websites that we’re already paying for. Just make sure it’s linked directly to the documents with the metadata and the tagging and all the things that go with that as opposed to something that would cost my agency a ton of money, which is a central repository where we were required to actually store the documents.

BOBBY TALEBIAN: With this recommendation we talked about, I think there’s a lot of questions that need to be answered. That’s what we would be doing at OIP, working with agencies to understand what they have, what the requirements would be, and what their impacts would be to come up with a set of standards that work uniformly across the government. I think everyone is on board with the end result so we’re just working backwards towards getting there. Whether it’s a central or repository on FOIA.gov, other agency’s FOIA websites that pick up the data or some other solution, I think that this recommendation allows us to get that work going and to move towards it being something that is realized across the government.

JAMES R. JACOBS: James Jacobs, Stanford University. Just along those lines, I think within the subcommittee we talked about an idea sort of like data.gov which is not a central repository per se, but a central meta repository for data across the government, so for something like this for FOIA would be really great.

BOBBY TALEBIAN: And thank you for mentioning that. Obviously, we’re not going to be here trying to reinvent the wheel. Existing successful examples such as data.gov and seeing what model we could use that’s most efficient and best for both capturing the records and the burden on agencies.

SUZANNE J. PIOTROWSKI: I have two questions. The first question was, these repositories, I wasn’t clear. Was the idea to have one for the entire Federal government or each agency have their own?

RYAN LAW: This is Ryan. So, Suzanne we have left the language open. One or more central repositories. We want agencies to be able to tailor their websites to their audience. There are different groups of folks that regularly access information from particular agencies and we want to be able to be responsive

to them. So, we leave it open. Agencies can establish their own and it leaves it open for there to be a government-wide website later on also.

JASON R. BARON: *FOIAonline.gov* is a step towards a future vision of many, many agencies utilizing one portal. I think it is, you know, the vision of the subcommittee to promote this, but if we are directing agencies to do something in the short-term, I think this is not going to work in any specific time frame of a year or two years or whatever. James proposed this and I think it's well supported as a consensus by this committee. I would recommend staying with the language as is and asking that Alina and Martha and Kirsten, for the next iteration of the FOIA Advisory Committee, will report faithfully on how OGIS and DOJ did to comply or to fully build out this kind of recommendation.

SUZANNE J. PIOTROWSKI: Thank you so much. Just my second question. If there was this option in the short-term or possibility that multiple agencies would have their own repositories. I would say at least to consider, I like the idea of standardizing it, but the idea that the standards should be at a minimum. I wouldn't want to get to the point where there are standards put in place and that somehow reduces creativity in the agencies to put more information or do different things with the repositories. So in some way changing the language to make it clear that these would be minimum standards.

RYAN LAW: Anyone have thoughts on that point from the subcommittee?

JAMES R. STOCKER: This is James Stocker. I think one danger of encouraging that agencies move in that direction is that if they create a lot of different models they may not be easily standardizable later on. If we get too specific in encouraging agencies to explore, to let a thousand flowers bloom, we could end up with many different repositories that ultimately couldn't lead to this one central online interface which is what I think everyone would ultimately like to see even if there are challenges along the way.

LIZZETTE KATILIUS: Lizzette Katilius. I do have questions about describing the records that are posted online. What are you seeing in terms of that? Because we already post, I think a lot of agencies, maybe all 70 agencies, post some information in their reading room. There's also data where agencies also contribute a lot of analytical information and numbers. So, when you say describing, are you envisioning where the agency writes a report about what they're posting?

RYAN LAW: This is Ryan. And others might be able to speak more intelligently than me, but may include such things as metadata tagging, coming up with a series of descriptions when you go to, and to pick on you, Bradley, to *DHS.gov* and when you search their FOIA library, you can find things by searching a key term. Describing a record in that way by adding metadata or by adding a tag to it, I think is one part of that. I think part of our review found that agencies sometimes throw documents up with a link and a very short description that may not actually match what the records are. That makes it difficult for the public to find those records. Even though they may be relevant and that leads to more FOIA requests, of course. I think that's an important part of our inclusion for descriptions to describe.

JASON R. BARON: This is Jason. And James, please feel free to weigh in, but the motivating factor of this recommendation was to make it easier for the general public to find records in one place or in a small set of places rather than going agency by agency. There are hundreds of agencies that might be doing good work on their own websites, but there's not a standardized set of records that would be available. And so, again, it's to encourage many agencies to come together to help the general public find stuff.

LIZZETTE KATILIUS: Okay, thanks for that explanation. That clears it up a lot.

ALINA M. SEMO: Ryan and Jason, how would you like to proceed? Do you want to take a vote on the language written or tinker with it some more and we can revisit on May 1?

RYAN LAW: Jason, you can shoot me down. I move we vote on the language as written and if we find we need to revisit this in a future meeting we'll do so. Alina, I move we vote now, on recommendation eight.

ALINA M. SEMO: Okay, do we have a second? Thank you. All in favor of recommendation eight the way it is currently written, say aye.

GROUP: Aye.

ALINA M. SEMO: Folks on the phone?

PHONE: Aye.

ALINA M. SEMO: Okay, I heard four Is. Anyone on the phone nay?

LIZZETTE KATILIUS: Yes, this is Lizzette. I think it needs to be clarified because describing is kind vague in this context, and in the narrative to recommendation eight, I don't see where it goes into metadata tagging. I understand the spirit of it, but I just think it could be a little tighter.

ALINA M. SEMO: Is that a nay?

LIZZETTE KATILIUS: Yes.

ALINA M. SEMO: Okay, thank you. Anyone else around the phone a nay? Anyone around the table a nay? Abi is a nay? Okay, anyone else? Abstentions?

BOBBY TALEBIAN: Abstain.

ALINA M. SEMO: All right, so it looks like we passed it with some—

JASON R. BARON: I will just say. This is Jason. I think all the comments are good ones and I think they can be accommodated in the text of the recommendation.

ALINA M. SEMO: But it appears we have a general consensus so we're moving forward as the language as written and we can work perhaps in the working group, on perhaps finessing the language more and taking in some of the comments received today.

JASON R. BARON: The explanatory text, okay.

RYAN LAW: Thank you everybody. This is Ryan, again, and these last two recommendations we knew there was going to be a lot of discussions. So, thank you for your feedback. Moving to recommendation nine on page 13, which is the final recommendation. Jason wanted ten more, but we held him back. The text of recommendation nine reads: "We recommend that the Archivist of the United States request NARA/OGIS to work together with DOJ/OIP to encourage agencies to release FOIA documents to the public on their FOIA Websites, and in FOIA portals in open, machine-readable and machine-actionable formats, to the extent feasible." Pausing now, for questions and comments from folks here and on the phone.

ALINA M. SEMO: Very quiet. Anyone have any questions, comments, and support?

RYAN LAW: James is smiling. Hearing none, I'll move that we vote now, on recommendation nine.

ALINA M. SEMO: Second. Thank you. All in favor?

JAMES R. STOCKER: I apologize if everyone is eager to get to a break, so sorry for the interruption. I wonder if you had considered in this encouraging agencies to post the most readable version of documents. This is particularly the case in agencies that use scanned versions of documents. In many cases, and I'm thinking particularly of some of the intelligence agencies that post documents on their FOIA site. There's a particular interest to historians and very often the versions that end up being posted are incredibly low resolution. This may be due to the use of outdated technology, but it happens to end up with the situation where OCR doesn't work well. I can't help but thinking that this is also an inhibitor for later searches of documents, because if the version of the document posted is not readable, then the OCR will not work very well. I wonder if there's a way in the recommendation or the text itself, or maybe this needs to be a separate recommendation, to encourage that agencies ensure that they use high quality scanned documents in order to facilitate these processes.

JASON R. BARON: I would ask James and open it up to people, whether high quality scans, OCR or whatever, make documents more machine-readable and machine-actionable. What is the delta there in terms of the problem because see it easily incorporated into the narrative of this section. I think, however, the recommendation is looking to the future of XML and other new ways for computers to read documents in a way that makes them manipulatable and useable by the community. And James please comment.

JAMES R. JACOBS: James Jacobs, Stanford University. Legibility is definitely important for OCR and for other technologies to do bulk analysis and stuff like that. But maybe, as Jason said, we can add that to the text of the recommendation or something like open legible machine-readable and machine-actionable formats. Something to that effect to deal with the legibility issue.

JAMES R. STOCKER: This is James Stocker. I think that sounds like a nice idea and not to pile on things to include, but another point is often difficult is for handwriting. So there is some OCR technology that only recognizes typed characters. Some is available for handwriting, but it depends on the quality of the handwriting. It's not going to be universally successful. Maybe there could be a mention of some handwritten documents in there as well. Although, I think that applies more to historical documents than current ones.

JASON R. BARON: Actually, we do mention it on page 14, scanned documents of all types along with handwritten documents, images, and photographs, are all very difficult to search and analyze. I think we have incorporated that thought of the I support. I have no objection to adding the word legible in the recommendation.

RYAN LAW: I'll concur with that.

JOAN KAMINER: Just to the extent that the hard copy original is legible. At least in my experience, a lot of the translation difficulty is when you're going from hard copy is that the hard copy you're dealing with, the historical document, is on their face not legible. That's not something to incorporate, but I wanted to make that point that it may have some impact but it also for historical documents may not. I know you are more aware.

ALINA M. SEMO: Do you want to move, Ryan with the amendment that we add the word legible after open and form machine-readable?

RYAN LAW: I will move that we vote on recommendation nine as amended.

ALINA M. SEMO: Is there someone on the phone?

MICHAEL MORISY: Hi, sorry this is Michael. One of the other things I wanted to check. If recommendation nine comes to pass, if there were standardized metadata available, I think having the machine-readable and machine-actionable is great, but especially if there are a few, and I think this is just using the standardized format that *FOIAonline* uses for document release. I think having standardized metadata to the extent that is feasible would be helpful. If some places use dates in one format and another in another, that causes a lot of problems for people building on that set. I think if recommendation nine is enacted, it will obviate a lot of the need for recommendation eight. Because if agencies are proactively posting things on their websites somebody out there will start pulling this together, whether it is within government or external to government and will kind of make that recommendation less challenging. I think having standardized metadata would be a really helpful aspect.

ALINA M. SEMO: Michael, thank you. That is something we can work on incorporating into the explanatory part of the recommendation.

BOBBY TALEBIAN: There is some overlap between eight and nine we could combine those two recommendations.

ALINA M. SEMO: They had been together before then we split them.

BOBBY TALEBIAN: In the spirit they are in right now.

ALINA M. SEMO: Okay, we're back to voting.

RYAN LAW: I will move to vote recommendation nine as amended.

ALINA M. SEMO: I already have a second. All in favor of recommendation nine as amended, please say aye.

GROUP: AYE.

ALINA M. SEMO: Those on the phone?

PHONE: AYE.

ALINA M. SEMO: All right, I only heard two ayes on the phone. Are there any nays on the phone? Any nays around the table? Any abstentions?

BOBBY TALEBIAN: Abstain.

ALINA M. SEMO: We'll take a 15-minute break now. I think we all probably need a comfort break. Just want to remind everyone no snacks or other food in the auditorium, but feel free to go to the Charters Cafe. There are restrooms available outside the theater. And let's come back at close to noon. If we can come closer to ten minutes as opposed to fifteen because we have a lot of work to do.

[Recess taken until 12:00 p.m.]

ALINA M. SEMO: Thank you everybody for coming back and hanging in there. I do want to point out to everyone I specifically brought coffee candy because I thought it was going to be a long meeting today and we should stay awake. I found them on Amazon. So, please feel free to help yourselves. They are individually wrapped. Unfortunately, we can't pass them out to the audience; it's just for the committee. And I'm sorry for folks on the phone. Okay, we made it through the first subcommittee, I want to now turn to the second subcommittee Time/Volume. That's Emily Creighton and Bradley White. I will ask one of you to present. I don't know who is going first.

BRADLEY WHITE: Bradley White, DHS. I'll kick things off for us. First, we fully recognize that our ideas are not as fully polished and beautiful as the Records Management ones were. We're expecting a little bit more spirited discussions on some of these things. One thing just for the subcommittee's housekeeping, we're going to have some of the folks who drafted the recommendations talk about the ones they drafted as we go forward, which means I get to go first. Yay.

Our first recommendation which we discussed a little bit at the last full committee meeting is: "That the Archivist request that agencies conduct a comprehensive review of their technological and staffing capabilities and requirements within two years to identify the resources needed to respond to their current FOIA needs and the anticipated FOIA demands of the future. Further recommend that the Archivist request that agencies apply the results of their comprehensive reviews to create agency-specific strategic plans that address expected increases in the number of FOIA requests received, as well as high-volume e-discovery style document reviews."

The methodology behind this, and I think this is a good time to talk about the survey we did, and I know we mentioned it before a few times. But over the summer and going into the fall, we conducted with a lot of help from Suzanne and from ASAP, we conducted surveys of both the Federal FOIA professionals and the requester community and I believe we got about a hundred responses back from each of those areas. So, it was relatively balanced and we got a lot of data back. In using that data we were able to identify areas where we thought that we could reach some sort of consensus on what was needed and what the problems were.

With this recommendation we recognize that, when we asked FOIA professionals where agencies could improve, a large percentage, 17.5%, referenced improving efficiency. Half of them referenced resources in their responses in one manner or another. Another group referenced technology. Which fits in our entire committee format of addressing these time and volume issues. Coming from DHS, one of the things we constantly try to balance are whether we have enough people, no, and whether we have enough technology, also no, to get everything we need and to do everything fast or at the least faster. And so what I realize and our subcommittees realize is that you need to look at both what you have now. So, you can look at your backlog, however many requests that is, and you can look at the type of requests and type of search results you get back and identify what you need to process those records or to duplicate them and how many people you need. But you also need to look at trends.

You need to look at how your FOIA requests have increased by whatever percentage each year. You need to look at certain predictable events like a change in the administration or an election, and how those things can cause a jump in your FOIA request volumes and you need to be able to plan for those in the future so that if, in a year or five years, something changes, you're ready for it. You don't wind up in the same exact place you are. That's the impetus behind the first recommendation here. And now I'll open it up tentatively for discussion.

ALINA M. SEMO: Jason.

JASON R. BARON: Picking up Alina on the point that you raised earlier in the meeting, I would ask whether the Archivist has the authority to request agencies to do something on FOIA. I would turn to Bobby at DOJ. If this were in the form of we recommend that the Archivist suggest to OIP to do this, what would DOJ's position be? I'll just say this. Has the subcommittee considered what the authority would be?

BRADLEY WHITE: Honestly, we have not.

EMILY CREIGHTON: I can say that we did go through and alter some of the recommendations to provide a role for OIGIS and in some cases, acknowledged and did talk with Kirsten and Alina about the limited role of the Archivist in directing the agencies to do some of the things that we would like them to do. I would, you know, really welcome, since we have the time here, some adjustments to the language before voting if folks are open to that and have suggestions. I guess I would rather that than it falling into the best practices bucket and moving in that direction, if we could find a way to make it a recommendation.

BOBBY TALEBIAN: Bobby from OIP. As far as my thoughts on this, a number of this is at some level, asked upon agencies to report on the Chief FOIA Officer report. So, for example, plans for backlog reduction every year if agencies have a thousand or more plans if you can close your oldest requests and actual plans to do that, and so forth. Every milestone where an agency doesn't meet it and any milestone for them to provide a plan, the encouragement of taking self-assessments, and what kind they have taken and also the resource challenges. If you have a backlog what are those challenges. Technology, especially in addition to asking agencies to showcase what advanced technology we're using. We've been asking, "what are the challenges you are facing in implementing technology you want?" So it's not just giving the positive examples, which are really important so we can leverage those across government, I think we can look at the CFO report where we ask these types of questions so we can get at more of what is being described here.

I also think this could be a best practice because it is something that aligns with the guidance already out there. And it is something that we would promote that agencies should do as best practice every two years, some level of this review. We are asking agencies to access every year and they should continually access all the programs.

BRADLEY WHITE: I recognize that you asked them to do the self-assessment every year. Again, that's either what they've just done or what immediately is in front of them. At least from where I stand, it's not a forward looking thing. What I found is that we're constantly being reactive. We are reacting to the things just happened or things right in front of us. Which leaves us open to new problems and potentially completely unprepared when these new things come forward which is why I wanted this more forward-looking.

BOBBY TALEBIAN: I agree. I think there's better ways where we may access our programs and we want to continue to build how agencies are doing that. One way this could look is that the best practices show what a full assessment is. Then, I can incorporate that in our CFO reporting, how agencies are looking at those types of assessments and what they're doing.

RYAN LAW: This is Ryan, so I agree with Bobby. The way this is written now, I think this is really good best practice. I think agencies should look strategically at their operations and plan for the future. It might make sense for the subcommittee to consider the Federal budgeting process as complex and convoluted as it is. I know enough to be dangerous, but I know that regularly OMB in the White House releases Circular 11 and I might be wrong on the number, which issues guidance to agencies developing their budgets and requests information on their performance.

It may be worthwhile to look and see if we might, for example, request that the Archivist asks that OMB include instructions to agencies in their annual budget documentation to address FOIA resources or something to that effect. That is kind of the government-wide strategic process for evaluating resources and dedicating funding and staffing and that sort of thing. It makes sense to look at the process that FOIA professionals and leadership should be involved in. And if perhaps another area, and this might be an area that future committees should look at, are FOIA professionals or leaders in the community involved in their agency's budget process and do they have a seat in that table? Just a thought. If not now, for a future committee.

ALINA M. SEMO: Thank you. Any other comments? Folks on the phone, don't be shy. Very quiet. Bradley and Emily, how would you like to proceed?

EMILY CREIGHTON: I sort of like Bobby's idea of looking at best practices in terms of what would inform a full assessment or a better assessment, not being entirely familiar with that process, but I think that might be a direction to go because I think what I don't want to miss here is, and I'm familiar with some agencies within DHS backlog reduction plans, and frankly, it involves throwing FTEs at it for a period of time until the backlog is reduced then backlog creeps back up. I don't think that's visionary honestly. I think what this contemplates is a plan that looks more years down the road and takes into consideration what has caused backlogs in the past and what we imagine five years from now might be happening around a future presidential administration. We can predict that there will be a lot of FOIA requests around a new administration to various agencies. Things like that, I think it's more about a strategic plan kind of approach, but I take what you said into consideration and think maybe a best practice that looks more carefully at what an assessment is so that it can better inform backlog reduction plans and other ways to improve FOIA. I don't know if Bradley has thoughts.

BRADLEY WHITE: I'm certainly open to a best practice. I think this is something that agencies need to do and I do think they need to be forward looking. I do know exactly what happens when an agency only looks at only the problem in front of them and solves it piecemeal, or attempts to solve it piecemeal, only for the problem to come right back at them when circumstances change. I know firsthand how incredibly difficult it is to hire FTEs and get people on board and cleared. I know that when agencies look at their staffing, it is, again, reactive. You look at, oh, I lost a person. I'm going to need to hire one more person or we have 30,000 FOIA requests to process and it will take a year to bring a new person on board, maybe I should get a contractor, but it takes 3-6 months to get a contractor or longer if you don't have a contract vehicle in place. So, I know that these are things that agencies absolutely need to look ahead to and attempt to solve the problem before it is a problem, before you're reporting in your Chief FOIA Officer report that you have a backlog of some ungodly number before you have to go to Congress before everybody sues you on the way you are handling your FOIA requests. These are all things you need to move towards so it is absolutely something that needs to be done. If it's not a

recommendation and it's a best practice, fine, but I would seriously hope that OIP's assessment and involvement goes beyond, "tell us what you did and what you'll do next year."

SEAN MOULTON: This is Sean with POGO. I really like what you're going for with this recommendation because I have to agree from an outsider's perspective, I know agencies are dealing with a lot, dealing with varying volume of requests, and large requests for large documents, but every year they do their best. And I applaud them for that. But, if they don't have a multi year plan for where they're supposed to be going, at the end of each year, they kind of throw up their hands and say we did our best. We'll plan for next year and there's no adjustment. If you had a goal, a five-year goal, where you're supposed to be, then a year in, two years in you start to realize that not only are the years overwhelming us, but we're getting widely off base from where our milestones say we should be and we need to do something differently. Right now every year, as you're saying, reacting to what happens last year and trying to do better the following year, but never really trying to say, you know, we're not making enough progress. So everyone is just running in place. I'm fine moving forward with the best practice, I think it's a good adjustment, but I think it's an important area that needs more work in terms of FOIA strategy.

EMILY CREIGHTON: Sean, Alina, Kirsten. In terms of deciding that something should be a best practice, procedurally, what should we do? I think we can decide before voting if there's a general consensus.

ALINA M. SEMO: Correct, we wouldn't have to vote on a best practice is what our instinct tells me but does everyone else agree? It would just be up to the working group to craft it and make sure that we put all these great explanations that you have here about the impetus behind it.

SEAN MOULTON: We didn't vote on best practices. We got input from members to make sure it reflected a general consensus of people's thoughts and did vote at the end of the overall document and recommendations and so there was that vote.

ALINA M. SEMO: Sorry to deny you a vote. And I know you guys want to go in order, but can I give you an opportunity to vote on recommendation six? Just going to the end only because I want to give you a win. [Laughter]

EMILY CREIGHTON: Oh, this is my recommendation. I will read recommendation six on page 10: "The Archivist recommends OGIS undertake an assessment of information agencies make publicly available on their website to facilitate the FOIA filing process. After the assessment, OGIS will recommend best practices. The assessment will examine how agencies describe the process for filing a FOIA request on their websites, the viability of agencies providing expected wait times for complex and simple requests, and the best contact information for an agency representative that can answer questions prior to the filing of the FOIA request."

I'll say a couple of things around this just in case it's not clear. Expected wait time for simple and complex requests, I understand that agencies do provide that on an annual basis. At least one agency provides it closer to real time USCIS, which is very helpful in terms of managing expectations of requesters, in terms of how it impacts an individual who is filing a first person request, in the immigration context, and that is where my work is focused, but I can imagine other scenarios where it would be helpful to have a better idea about what you could see as things change throughout a year. So that's the one thing I wanted to clarify there.

And then the agency representatives that answer questions prior to filing of the FOIA request, there obviously is contact information after you file a FOIA request, you are able to reach out to the agency and there are public liaisons, FOIA liaisons, that you can reach out to at some agencies, but I think and we found from the survey results that people are willing to do research, would like to prepare their FOIA in a way where they'll gate response they want. The records that they actually want in a way that the agency will be able to respond quickly. So, I think it would be extremely helpful to have a point of contact at the agency prior to filing a FOIA request. Happy for questions.

ALINA M. SEMO: Questions from anyone around the table?

JAMES R. JACOBS: James Jacobs, Stanford University. Just one quick question. I know from a requester standpoint that that line between simple and complex is often undefined. If you could say something about that as well. I have submitted FOIA requests where they say it will be complex and it's going to take six months, and then when I respond to them and say that they've already scanned the document, they just need you to release the document, and then they give me the document. So, sometimes, you know, simple versus complex is complex.

EMILY CREIGHTON: I want to recognize that Kevin Goldberg drafted this with me. So, Kevin, you want to speak to that?

KEVIN M. GOLDBERG: Sure, I can. You know, we kind of understand as well that that is going to differ between agencies. I agree James, this is part of what we already talked about. I just think that's kind of where you're going to get into, maybe, calling or having a conversation first. It is going to be hard to pin down on every request. Certainly, across agencies and even agency to agency, component to component, within an agency and even sometimes requests for requests it would be very hard to pin down exactly what a complex versus a simple request is. I'm not sure we can ever get there with any decision. So, I understand your problem, and I don't think it's that easy to define, perhaps, up front, what a simple versus complex is going to look like once the request is made, that was a concern that we had.

SEAN MOULTON: This is Sean Moulton with POGO. I just wanted to point out that I know that posting the expected wait times or trying to come up with some way of posting expected wait times might be a burden on agencies, but I actually think that if we can figure out a way to do it, that minimizes the burden on them, it could reduce the level of calls that FOIA officers and FOIA processors are getting asking about their request. If they're in the complex queue or the simple queue and they see it's a whatever it is, a 30-day wait, and it's been 10 days then you know that I probably shouldn't call yet. Everyone is waiting this amount of time and it is probably useless to call too soon.

EMILY CREIGHTON: And I'll just say on page 12, the second paragraph down, and maybe we didn't go into as much detail as Kevin and I initially discussed, but to the extent that the agency's website can provide even an example or some information around what would be considered simple or complex, that would be particularly helpful. I also squeezed in here something the requesters hear a lot about from the agencies that it's not a specific request and other tips for narrowing requests to the extent that that kind of guidance can be there. You're in that territory a lot, after you file a FOIA request where you have conversations post-filing and let's cut down on that communication and expedite the process like Sean mentioned.

ALINA M. SEMO: Thank you, Emily. Anyone else on the phone have any comments? Questions? How about if we put it to a vote? Does someone want to move?

BRADLEY WHITE: Move to a vote on recommendation six.

ALINA M. SEMO: Thank you for the second. All those in favor of recommendation six moving forward, please say aye.

GROUP: Aye.

ALINA M. SEMO: I heard one aye on the phone. Can you hear any others?

PHONE: Aye.

ALINA M. SEMO: Okay, I heard three ayes. Are there any nays on the phone? Nays around the table? All right, any abstentions?

BOBBY TALEBIAN: Abstain.

ALINA M. SEMO: All right, so recommendation six is passed. See, a win. All right, I will defer to you guys if you want to go in reverse order and want to pick up with two. Sorry if I messed up your order, I just thought it was an easier one to hit. Patricia?

PATRICIA WETH: Hi, Patricia Weth, NLRB. Recommendation two is that we ask, "That OIP collect information, as part of each agency's Chief FOIA Officer (CFO) Report, regarding the Standard Operating Procedure (SOP) for the processing of FOIA requests and the FOIA webpage."

How we came up with this recommendation was we looked at some of the survey responses that we received. One survey question that went out to the requester community was, "what are your biggest questions about the FOIA process?" And their biggest question was about the process itself. 31% said, "I have questions about the process." Okay, that's a problem.

Next we then asked agency personnel to identify their perception of what was confusion among requesters. Agency personnel, 36% identified knowledge of a process as a problem.

Lastly, the other question that I relied on or looked to was agency personnel were asked if they had a magic wand to fix FOIA, what would they do? Agency personnel, 20% identified fixing internal processes. So, the fact that 20% of agency personnel identified internal processes is a problem. Really indicates a need for standard operating procedures. So, we're recommending that agencies draft standard operating procedures, but what they can use in drafting these is relying on DOJ's FOIA self-assessment tool kit. I mean, they can use each of the modules and walk through. That can help them in the drafting of this.

Also it's important to point out that this is twofold: One, agencies should have an SOP. And two, agencies really need to update their websites and really give requesters an idea of the process and really explain it to them. And so module 13 of the tool kit talks about the FOIA websites and what agencies should be doing with their FOIA websites. Additionally, DOJ issued guidance entitled Agency Websites 2.0, and I think Jason mentioned that earlier today. That gives additional guidance on what agencies should have on their website. If an agency has a well-drafted FOIA reference guide, it can walk the requester through the process and alleviate this confusion, because this really shouldn't be the way. We

need to do better for the requester community. So we're suggesting that agencies, one, create this SOP, and two, update their websites. I'm happy to answer any questions or take any comments.

EMILY CREIGHTON: I think that actually some language around the drafting is not here where we talk about collecting information.

PATRICIA WETH: Right. So, in order for each agency to answer the Chief FOIA Officers report they actually have to actually have an SOP. So, if there was a question in the Chief FOIA Officer's report asking does your agency have an SOP, and do you update it every two years? I think that would be a red flag to the agency, "oh, I better get on this and create an SOP." That was the thought behind that.

EMILY CREIGHTON: Okay, I didn't fully understand that piece.

ALINA M. SEMO: Any other comments or questions? All right, folks on the phone? You guys are very quiet. Chime in. Okay. Lee, go ahead.

LEE STEVEN: Lee Steven, I just have a question on the wording of the recommendation. If you take out the parentheticals and so forth, you're asking for "collect information regarding the FOIA web page," if you take out the SOP stuff. What does that mean? Collect information regarding the FOIA web page? That to me is not clear enough to understand what information you want them to collect regarding the FOIA web page.

PATRICIA WETH: I see what you're saying. So, what if I put in, regarding the standard operation for the processing of FOIA requests—

LEE STEVEN: Is the SOP for the web page? Or is the SOP just relating to the processing of FOIA requests?

PATRICIA WETH: I'm sorry. In my mind it's just the processing of the FOIA requests and secondly regarding updating the FOIA web page. So, I see what you're saying. The wording is a bit awkward here.

BRADLEY WHITE: Bradley White, DHS. Let me jump in. I think what we're trying to get at is that we don't just want the SOP to be an internal document that the agency looks at, the public needs to know what the processes are, and the website needs to communicate the SOP or portions of it, the really, really important portions, to the public so they understand what they're getting into and what the agency is doing with their request.

PATRICIA WETH: That's correct. We do have that identified in the last paragraph. Thanks for pointing that out. Perhaps what I would suggest is maybe rewording this language that "request that OIP collect information as part of each agency's Chief FOIA Officer's Report regarding one, the Standard Operating Procedures for the processing of FOIA requests, and two, the FOIA web page." Does that sound a bit clearer?

SEAN MOULTON: I would even strengthen that too to say "to the posting of a public version of the SOP on the agency's web page."

RYAN LAW: This is Ryan, I would suggest looking to section (g) of the FOIA which requires agencies to post to the public a guide for requesting documents from each particular agency. Our subcommittee looked at those guides as part of recommendation one, and found varying levels of utility across agencies. Some had very good examples and some did not. I think there is some synergy between this recommendation and our recommendation one. Perhaps, if this recommendation were to pass, they

could be combined. Perhaps we could look there. And second, to Jason's point earlier, we need to ensure that we have the authority to make the recommendation here as well. So, are we asking the Archivist of the United States to request that OIP add these questions to the Chief FOIA Officer Report or are we requesting that OGIS include these questions in the Records Management Self Assessment that is conducted every year? Or another vehicle that OGIS may have.

ALINA M. SEMO: Thanks for bringing that up Ryan. I was also to bring a formulation of the question up too.

PATRICIA WETH: So, hearing what everyone is saying, I do see overlap with recommendation one of the Records Management subcommittee as well as the Time/Volume recommendation six regarding the FOIA website. And I don't want to lose this so maybe what I would suggest, because the FOIA website portion seems to be covered in two other recommendations passed by this committee, perhaps regarding the standard operating procedure, we could suggest that as best practice.

EMILY CREIGHTON: This is Emily. I'm not opposed to that. I did want to clarify for folks at the table. I think we did talk about an SOP and how it might differ from a FOIA handbook when discussing this in that SOP, and it is aspirational in some cases, which is why it's here, would actually be not outdated. It would be what agencies are actually using, which may not exist. I mean it may not only be outdated guidance. I know that Bradley would like that not to be the case. [Laughter.]

I would imagine others at other agencies feel the same way. So, I just wanted to throw that out there. I guess it's maybe a question about what authority we have to really recommend to agencies that they develop something that doesn't currently exist and then ask them questions about it is where I think we were ending here. I don't know if others have thoughts.

SEAN MOULTON: Well, this is Sean from POGO. I continue to think as the FOIA Advisory Committee, that we have the authority to recommend to agencies and that we can word this if we want the actual wording in the recommendation that the Archivists convey. There's lots of ways to word it. The Archivist doesn't have to have the authority to make it happen so much as we recommend something that the Archivist can convey or request, that's fine.

I also think that I would prefer to keep this as a recommendation rather than best practice. I think it's important enough and I think it's something new enough from the other recommendations. Maybe we can figure out a way to put them together. But for today, we should discuss whether or not there's agreement on it as a recommendation.

ALINA M. SEMO: As a stand alone recommendation?

SEAN MOULTON: Yes, that potentially we may figure out a way to put them together but there is no reason not to vote on this now as a stand alone.

ALINA M. SEMO: Okay.

BRADLEY WHITE: Bradley White, DHS. Thank you, Sean. I think this also may be a place where we split the baby, where having an SOP could be a best practice, but we could recommend the Archivist request OIP to ask questions about the existence and the content of the SOP which would then be a red flag to the agencies that don't have SOPs that you don't want to say no on something that OIP asks you on all

the time. “Hey, how's your SOP?” “Um, I don't know.” [Laughter.] You are going to want to fix that eventually, just as another option for discussion.

JASON R. BARON: This is Jason. I'm supportive of the recommendation, but the wording here, aside from a technical change about the Archivist recommending that the OIP something, is that OIP collect information and that's it. And so I think the goal here needs to be something more than that for agencies to change their actual procedures or enhance them, make them transparent. I would suggest that this is held in advance for a committee vote. So that the wording can be strengthened. Alternatively, I don't know whether this is procedure, but to have a committee vote that the spirit of this is approved at this meeting, very much like our September meeting where a spirit of the proposed recommendations were approved subject to word changing.

EMILY CREIGHTON: Emily. I would vote in favor of the second proposal that we vote in favor of the spirit.

ALINA M. SEMO: So, can I have a motion for this amended language? Just so we're all clear it amended language would read something along the lines of: “The Archivist requests that OIP collect information as part of each agency's Chief FOIA Officer's Report regarding: one, that the Standard Operating Procedure (SOP) for the processing FOIA requests; two, the FOIA web page.”

Is that what everyone has got?

JASON R. BARON: That was only halfway what I was suggesting. The wording here says that the only thing that the Archivist would be requesting from the DOJ would be to collect information. I think the spirit of this recommendation goes much further than that. I think there's a need for further wordsmithing.

ALINA M. SEMO: Okay.

PATRICIA WETH: So, do we want to hold this in advance and revise it?

EMILY CREIGHTON: I would like to vote on the spirit, if that is a thing we can do.

ALINA M. SEMO: All right, it seems like we're in agreement to vote on the spirit. We can vote again on the wordsmithed language on May 1. All in favor of the spirit of recommendation two as presently discussed, please say aye.

GROUP: Aye.

ALINA M. SEMO: Folks on the phone?

PHONE: Aye.

ALINA M. SEMO: By the way, I just want to note Lizzette had to drop out. So, we're not hearing her votes. Any nays on the phone? Any nays around the table? All right, any abstention?

BOBBY TALEBIAN: Abstain.

ALINA M. SEMO: One abstention. Okay, moving right along. Recommendation three.

JOAN KAMINER: Hi, this is Joan Kaminer, EPA. I just want to note that it appears that an older version of recommendation three was included in your packet. I will be reading from the final version, and I think

maybe there's some miscommunication in the final version, but maybe it could be disseminated via email this afternoon or this week.

I will be reading from my phone. So, the recommendation is, "That the Archivist direct OGIS to undertake a study of agency's FOIA training requirements and content, including an evaluation of mandatory training, onboarding, or supplemental training, first-line supervisor training, and subject-specific training for subject matter experts and technology professionals. The study should also include an assessment of funding sources and allocations for the identified training. The committee further recommends that OGIS submit the results of its assessment and any recommendations to Congress and the President in accordance with 5 USC Section 552 (h)(5)."

As you can see this is somewhat different from the previous draft that's in front of you. I just want to point out in the paper version you're looking at, it actually provides a little bit more detail on what each of those trainings might constitute. It gives more flavor to what we were aiming at. The idea of having mandatory training I know is something we discussed in our subcommittee meetings but I think the combination of such as mandatory training and as well as specialized training would go a long way to increase transparency and efficiency in FOIA responses and additionally help with FOIA backlog reduction and processing times.

EMILY CREIGHTON: Can you read it one more time?

JOAN KAMINER: Absolutely. The recommendation is, "That the Archivist direct OGIS to undertake a study of agency's FOIA training requirements and content, including an evaluation of mandatory training, onboarding, or supplemental training, first-line supervisor training, and subject-specific training for subject matter experts and technology professionals. The study should also include an assessment of funding sources and allocations for the identified training. The committee further recommends that OGIS submit the results of its assessment and any recommendations to Congress and the President in accordance with 5 USC Section 552 (h) (5)."

The other thing I would note is that I think as many agency representatives will mention funding sources, having the budget to fully train up not just FOIA professionals, but individuals who touch on the FOIA process which can be quite extensive. It can be limited and understanding our limitations and having the Archivist direct certain actions, particularly to direct Congress to provide funding, is wonderful, as that would be, is rather limited. So we were trying to find a way to get to the spirit behind it within the authorities that we have.

ALINA M. SEMO: Okay, sounds great. Lee?

LEE STEVEN: This is Lee. Just so I'm understanding the exact request here in this recommendation, and I'm going to summarize, so let me know if it's wrong. You were asking OGIS to collect information on the existing training programs, and then from that assessment, that gathering of information, to come up with recommendations that ultimately transfer to Congress and the President. Is that correct?

JOAN KAMINER: That's correct. But I just want to point out that it's not just an assessment of what type of training is available, but also the content of that training.

LEE STEVEN: Would that be new information that is not currently available now or perhaps it hasn't been centralized by OGIS? Would that be asking for new information that is not otherwise out there and collected or assessed annually?

JOAN KAMINER: So, OIP does collect information on training. You will see that in the printout that you have under the rationale. It lays out what the existing mandatory FOIA training is and from my perspective there's no legally enforceable mandatory training requirements. On page five, I walk through the Attorney General memoranda on the Freedom of Information Act as well as the 2015 guidance for further improvement based on the 2015 Chief FOIA Officer's Report Review and Assessment. There are certain questions that agencies do answer to provide additional information on their training. I envision that this assessment that OGIS conducts goes well beyond the question and information that's gathered in the FOIA officers report. But, if you wanted to look at the four questions on page five that's currently collected by OIP.

ALINA M. SEMO: Jason.

JASON R. BARON: Jason. So, I'm very supportive of training. We have recommendations about training and I think ultimately in the final report, this might be a good recommendation to combine. I just want to make a point. You said here today and in this document that there's no mandatory legally enforceable mandatory FOIA training, but please tell me and I'm looking at Bobby and Alina, the statues at 552 (j)(2) (F) you have a typo in here. It's J2F. It says that the Chief FOIA Officer for each agency shall, and it uses the word shall, subject to the authority of the head of the agency, offer training to staff regarding their responsibilities under the FOIA. So, my understanding is that there's a mandatory requirement. However, I'm very supportive of having OGIS working with OIP to make sure to enhance the training that's going on in various ways that you set out, and to study and to actually take actions to make suggestions to agencies. So, I wanted to make that legal point. I had to act as a lawyer here at least.

JOAN KAMINER: I was focusing on the term mandatory. So, I think that Bobby wanted to say something. My understanding that most agencies apply this requirement. It doesn't require mandatory training for all agency employees, so it's not identified. The security compliance training that every agency employee is required to take or their access to information systems are, you know, restricted. That is what I think we're really getting at. FOIA is a responsibility of all employees, so if you are looking at that high level mandatory FOIA training for all agency employees, I think that's what we would like to see. The additional trainings described in the bullet points, I don't see as necessary for a mandatory training. It would be up to the discretion of an agency. But, Bobby had something to say.

BOBBY TALEBIAN: I was just going to add that that provision requires the Chief FOIA Officer to offer, of course, and OIP is very, very, very supportive of training. It's a key part of our mission and a key part of what we do. And that's why we did include in the reporting for a long time now. Not only is the agency offering training, but what percentage of the agency's FOIA professionals are actually attending substantive training. So that would include new agency FOIA professionals and FOIA professionals that need continuously up to date training. We also ask a technical addition. We ask agencies to report on what kind of outreach and training they are providing to their non-FOIA professionals. Because we do recognize that FOIA is everyone's responsibility, and it's really important, and we created a module for that to help agencies provide that training. We just wanted to add that technical addition in there.

ALINA M. SEMO: And as Director of OGIS, wearing that hat, I would prefer to see this done in conjunction with OIP. I think that's a more logical way to proceed. So, if we could, again, adding to the spirit of this recommendation that's only been read out loud twice unfortunately, but we can circulate later. Just wanted to add that.

JOAN KAMINER: And I can make the revision to add OGIS, and similar to the other—

ALINA M. SEMO: And OIP.

JOAN KAMINER: —and OIP. I think just parallel to some of the language in the other recommendations that had both organizations involved.

ALINA M. SEMO: Joan, do you want to move for the spirit of the recommendation?

JOAN KAMINER: So, we're going with spirit?

EMILY CREIGHTON: Because we don't have it in front of us.

JOAN KAMINER: Darn. Okay. Moving for voting on the spirit of recommendation number three. Thank you.

ALINA M. SEMO: Thank you. Okay. Do I have a second? Can you hear the ayes?

GROUP: Aye.

ALINA M. SEMO: All right, folks on the phone?

PHONE: Aye.

ALINA M. SEMO: I heard two ayes on the phone. Any other ayes?

CHRIS KNOX: We hear more than the number of ayes you're saying on the phone. I think it just might be a delay on the phone coming on.

ALINA M. SEMO: Ahh, thanks for pointing that out. You're an aye, right?

CHRIS KNOX: I'm an aye.

ALINA M. SEMO: All right, any nays on the phone? Any nays around the table? All right, so we're passing the spirit of recommendation three which will be language provided by Joan and/or Bradley and Emily. We will have it in front of us and we'll work it into the draft report and look at it again before May. Okay, so we pass recommendation three in spirit. Recommendation number four.

JAMES R. STOCKER: This is James Stocker. Recommendation number four reads as follows, and this may be some language that needs to be altered on the same pattern as some of the other recommendations that have come out of the committee: "That agencies identify common categories of documents requested frequently under the FOIA and/or Privacy Act by or on behalf of individuals seeking records about themselves, and establish alternative processes for providing access to these documents to requesters in a more efficient manner than the FOIA."

So, this is a recommendation that originated in our international sub-subcommittee that Abi and Patricia and Ginger who is no longer serving on the committee, worked on a lot. The goal of the

recommendation, basically, came out of an observation that we had. That in the United States we have many more times per capita than the number of FOIA requests in other countries. That brought the question why that's the case. One of the answers we think can be gleaned from a presentation we had earlier in our term by professor Margaret Kwoka on the issue of first person FOIA requests, questions by individuals for information about themselves. The goal of the Freedom of Information Act was originally to increase the transparency of government operations. Ultimately, to increase accountability of the government by providing information to the people which is not exactly the same thing as providing information to the people themselves.

So, the goal of this recommendation is ultimately in line with the task of this committee to reduce time and volume of requests and in particular volume by reclassifying these requests. It doesn't mean all of a sudden they stop requesting information about themselves. It means that FOIA would no longer be the primary conduit of that information and would not be regulated. Since our last meeting where we introduced this resolution, the language has changed quite a bit. Emily worked very close with me on this and we received a little bit of feedback from Alina and Kirsten. And then a number of others made comments on the recommendation. There were a couple of questions that we had. We had to make some decisions in order to move the recommendation forward today. One question was basically a question of what kind of first person request would be included? The original language only had individuals and we ended up adding language on behalf of the individuals to include lawyers and other representatives of individuals making a records request.

Some members of our committee also suggested that we include organizations and businesses as well. There were a couple of people in favor of that, but also a little bit of opposition. We didn't tease out the issue too much. If any committee members have comments on that it might be worth discussing now. We also asked questions about the language that we use. We're asking for access to these documents to requesters in a more efficient manner than the FOIA. The goal is not to somehow dilute the right of first person requesters to information about themselves. So, I think all of us who worked on this recommendation would hate to see a situation where a new process was created that was actually slower or resulted in fewer records being produced or less information produced for first person requesters. I think that's important for us as well. So, that's the recommendation. I look forward to hearing any questions or comments that you may have.

BRADLEY WHITE: Bradley White, DHS. I would suggest one change there and that would be in addition to figuring out who's going to make the request and take the action. But I would strongly recommend that the agencies would "look into" establishing these matters rather than flat out requiring or attempting to require that the agencies do that. Only because there will be some categories of records where this may not be feasible.

JAMES R. STOCKER: Thank you. Do you mind if I ask why it may not be feasible?

BRADLEY WHITE: Sure. If you look at the single most commonly requested record in the Federal government, the Alien File, they're not just records about the person, there are case notes from the attorneys handling the proceedings that are in those files. There are investigatory records that either belong to ICE or CBP in those files, and maybe other records in there as well. It's one thing to give everyone access to their own benefits applications, but when you talk about law enforcement records, that brings a whole different wrinkle to it. We're not talking about discovery. There's information that

could be law enforcement sensitive. Again, attorney-client privilege, attorney work product. All of those things would be in the files and you would really have to separate those records from the file.

JAMES R. STOCKER: If I can respond to that really quickly. First off, it's not only about immigration records although obviously immigration records are a major category of records that would fall under this category. I don't think the recommendation also is requiring that they simply be turned over, that there would be no process of review at all. There are alternate mechanisms for providing this. One example is the encouragement of this idea of administrative discovery, which is an issue beyond my area of expertise, but it would be an alternative way of proactively disclosing information that can be key to legal defense, to meet the purposes of the request. So, I guess I want to say that it's not requiring that records be turned out without any consideration of these sensitive issues that you so rightly point to.

SEAN MOULTON: This is Sean with POGO. I'll reinforce that. I think if there was an alternative process, especially on the Alien Files, if you have reviewers looking at it and you knew they weren't going to be looking at privacy information because it's a first person request, they didn't have to concern themselves with pretty much any other exemptions. They were really doing law enforcement or something like that, review. It could actually speed up that review process for them. And there could be parts of the alien file that could almost be automated eventually.

So, you know, if a system could be built and changes made, you could get some percentage of the Alien File that's almost automated and then a different approach. But I do agree that "establish" might be a little too bold and it might need work before you could establish the system. I think that's the case around the Alien files. There needs to be work done on the record creation and management, that that has to be solved so that you could even have a system that probably would work. I don't know if you envision that as part of the establish, but I don't know if it needs to be in the recommendation but should definitely be in the explanatory text, that you almost have to look before, it's not just about the request and answer process, it's about record creation and management.

BRADLEY WHITE: I think you're completely right about the use of technology here. I think this is one area where some of these things could easily fall into the bucket that the Records Management committee, the recommendation we passed earlier, with looking into AI and machine-readable stuff. That's an area where this could absolutely streamline and make my life way easier. [Laughter] Selfishly. So I agree with that. Portions of this could absolutely work with the earlier recommendations and, again, it is something that the agencies do need to look into, but, yeah I just prefer the softer language.

RYAN LAW: I'll agree. Sean made my point earlier. I also agree with Bradley too on some of the challenges associated with this. I think the language here is carefully constructed. There are certain categories of documents and not necessarily the entire record might not be available to the individual. Certainly, certain documents in that file might be available without additional review. As I mentioned at several community meetings ago when we had a presentation about this and I brought it up then. There are agencies doing this now. The IRS is an example where we afford access to taxpayers without the need to file a FOIA request. So they're able to contact the IRS and get access to documents that they need. There are certain documents in the file that they must file a FOIA request for, but for the most part, that's the effect of driving down the demand for the number of FOIA requests. I would caution that particularly in these systems of record that are mixed, where you have law enforcement and non-law enforcement records, I think this might be the case at DHS, DOJ, and others. Even if you create a separate process for individuals to gain access to those materials, you have to ask the question, who is

going to do that work? What's happening now, as a matter of practice, is that FOIA analysts are doing both FOIA and Privacy work across government. It's done differently in other places but DHS and in Treasury, that work is done by the same folks. So, it's a question of who is going to do that work? Maybe I might propose one thing OGIS could do is, in addition to this, is to identify best practices that agencies have undertaken in this area. And encourage agencies to follow suit.

One last thing, as agencies begin to implement M-19-21 which is the requirement to manage records electronically from cradle to grave, I think they'll be more opportunities for agencies to leverage that in order to find more efficient processes. No longer will files be in papers stored in Lee's Summit, Missouri, as Alien Files are as Bradley knows, they'll be digital and portable and available. Hopefully, as we have encouraged in the Records Management subcommittee, we're able to increase access to the public as well and to individuals.

SEAN MOULTON: I would just chime in. I agree that as those records mandatorily become more digital there will be opportunity, but I think as we're making that process, it really helps to be, for a recommendation like this that points out to agencies that as they come up with a digital version or electronic version of it, think about disclosure. Because if you can automatically segregate into an entirely different document all the law enforcement sensitive information so that the other document can be released and this one is always withheld, there's just no question about that. That might not be how law enforcement would automatically do it if someone is not going to them and saying look, maybe we can segregate from the start. They would just say, "we'll put it all together, that's helpful to me." But it makes it more difficult down the road.

ALINA M. SEMO: Just want to chime in. We have surpassed our 1:00 o'clock time period because we're having a robust discussion, I really didn't want to step in. I want to leave it to the committee members. I'm happy to stay all afternoon, I'm serious. Because, as I said, we have a lot to get through. But I really want to get the sense of everyone how much longer you want to hang in there and whether we might even be able to aspirationally get through recommendation four and five. I feel very badly for the Vision subcommittee. I know everyone has been working very hard. We can decide whether we want to hear from the Vision subcommittee today or table and hear from them on May 1. What are everyone's thoughts?

CHRIS KNOX: Alina, this is Chris Knox. I think pushing everything to May 1 is a little concerning since we need to get the working group going. Myself, I can stay on for probably another 20-25 minutes. I don't want to speak for everybody else. If we can't get through Vision today, I would recommend we possibly schedule a call to follow up in the next week so we get through it so the working group can do their work. I don't think holding them up until May is wise.

ALINA M. SEMO: That was Chris Knox, right? The problem with having a call is it violates the Federal Advisory Committee Act. We're supposed to be having open discussion in front of the public. And I also apologize, I know there's always a public comment period at the end. We'll just have to invite public comments online at this point. I said earlier where you can send your public comments, and would very much like to see whether we can at least get the recommendations four and five.

EMILY CREIGHTON: I'm able to stay.

ALINA M. SEMO: So, let's just move forward. So, where are we with recommendation four?

ALEX HOWARD: [Interposing] I'm sorry, but you shouldn't cut off public comments in exchange for discussion. That is not right. It's a public meeting so there should be public comment. If you want to table this and move to the next thing that's fine. This isn't just about me. There are people online waiting to ask questions. Please don't do that. If you do that, that's the story from the day.

ALINA M. SEMO: For the record that was Alex Howard, who is always very happy to join in for public comments. What is the sense of the committee? What do you want to do? Let's push forward. Let's allow for five to ten minutes at the end and see if we can get through recommendations four and five, okay?

PATRICIA WETH: This is Patricia Weth NLRB. I just want to comment on recommendation number four and I do understand the agencies that deal with law enforcement issues because my agency also deals with them too. But, what we were hoping with this recommendation is that if agencies can come up with a process such as what Treasury does with the IRS to allow taxpayers to obtain their transcripts of their taxes without going through FOIA or similar to what the VA does it allows attorneys and veterans to obtain their benefits from the Veterans Administration benefits system without going through FOIA. I am very sensitive to law enforcement issues but this is for agencies to look at other possible avenues so that information can be given that way without having to go through the FOIA process.

EMILY CREIGHTON: So this is Emily. I wonder if folks could agree if there was a recommendation that OGIS could access what agencies have done? James? Along those lines? I don't know.

JAMES R. STOCKER: Personally, I would find that a little bit weak just conducting an assessment because I think a significant amount of research has already been done in identifying the problem. So we the problem exists but I would be happy to include that in addition to what is there.

EMILY CREIGHTON: Sorry, just as a point of clarification—I think there has been a lot done to see what problems exist but, for example, some of the literature around this doesn't involve the operational side so I think that it would be really helpful to see for agencies that are doing this what operationally they are doing to inform other agencies. Does that make sense?

JAMES R. STOCKER: Well, I just want to know if that is in addition to whether the request or the strong suggestion or the look into that they establish alternate processes.

EMILY CREIGHTON: Right, I think the "and establish" part—I'm getting the sense that people, I don't know what folks are thinking along those lines.

BRADLEY WHITE: I will repeat myself. The "and establish" part is a no go for me.

JAMES R. STOCKER: Is that a feeling that is shared amongst the committee? Because I understand, particularly for the immigration files, this is a sensitive issue. And I respect that but I just would like to know how much of a concern that is for other people.

EMILY CREIGHTON: So, I guess the question then becomes "and establish alternate processes," it would be OGIS recommending that these processes be established.

JAMES R. STOCKER: Well one suggestion that Bradley made was to look into establishing right? Which is a little bit different—

EMILY CREIGHTON: But OGIS would still be recommending to the agencies to look into establishing, right?

JAMES R. STOCKER: Yes.

EMILY CREIGHTON: Okay. I'm just thinking about who is the actor here. Do people understand that? Maybe you could repeat it again James and we can vote on the spirit.

JAMES R. STOCKER: Okay, so in this scenario, the recommendation is as follows: "Would recommend that the Archivist recommend that OGIS requests that agencies identify common categories of documents requested frequently under the FOIA and/or Privacy Act by or on behalf of individuals seeking records about themselves, and establish alternative processes for providing access to these documents to requesters in a more efficient manner than the FOIA."

EMILY CREIGHTON: Could OGIS recommend that to agencies there? If OGIS were to take on the assessment.

ALINA M. SEMO: We have always taken the position that it's really DOJ, OIP in particular, that issues guidance to agencies. We're not in a position to issue legal guidance that we could enforce. So that is the issue. So, you could, once again, make it a happy marriage between OGIS and OIP, so that is something that we could certainly work on. But I defer to Bobby as well—he might not be willing to work on anything with me. [laughter]

BOBBY TALEBIAN: That is not true at all. [laughter] Honestly, I think we have guidance that touches on this so I will go back and look at that.

SEAN MOULTON: This is Sean from POGO. I would recommend a small tweak to the tweak we just got. Instead of "look into" would it be okay to say "seek to establish." It's a little bit more than not just research it but try to move toward it. Yeah. "Seek to establish alternative processes..."

ALINA M. SEMO: So Emily, Bradley, what would you like to do?

EMILY CREIGHTON: Could we vote in the spirit of that recommendation?

ALINA M. SEMO: Sure. For recommendation number four.

EMILY CREIGHTON: I don't know—do we have the language completely finalized?

JAMES R. STOCKER: Let me read what I've got here so far: "Recommend that the Archivist of the United States requests that OGIS and OIP request that agencies identify common categories of documents requested frequently under the FOIA and/or Privacy Act by or on behalf of individuals seeking records about themselves, and seek to establish alternative processes for providing access to these documents to requesters in a more efficient manner than the FOIA." Is that good?

ALINA M. SEMO: So, on recommendation number four, that is the motion.

JAMES R. STOCKER: Yes, motion.

ALINA M. SEMO: Do I have a second? Okay, let's take a vote. All in favor? Please say aye.

GROUP: Aye.

ALINA M. SEMO: Folks on the phone?

PHONE: Aye.

ALINA M. SEMO: Okay, anyone opposed please say nay. Anyone around the table? Nay? Any abstentions?

BOBBY TALEBIAN: Abstain.

ALINA M. SEMO: So, recommendation four is passed with the wordsmithing that we just discussed. Let's try to move on to recommendation five which is the last one. I think that looks like it's Abi.

ABI MOSHEIM: Hi this is Abi, Consumer Product Safety Commission. And I'll read recommendation number five: "Recommend that the Archivist address agencies' need to provide for the dissemination of information outside of the FOIA and ensure that the programs that provide such information dissemination are robust. Consistent with the National Archives and Records Administration's M-19-21 Memorandum which directs agencies to ensure that all Federal records are created, retained and managed in electronic formats, with appropriate metadata, by December 31, 2022, recommend that that Archivist address agencies' need to provide these records electronically, developing online databases where members of the public may access commonly requested types of documents that go to the heart of the agency's mission, and providing secure online databases where that information contains personally identifiable information or other sensitive information."

As so again the goal is to keep as much outside of the FOIA Office as possible and just using my current agency as an example, we have a clearinghouse division that provides all copies of consumer complaints online and without that I think the FOIA Office—we currently get about 554 requests a year and without that clearinghouse data going out it would be triple that. And we also have another division that provides injury data related to consumer products. Without providing that data that is much sought after, those requests would be flooding our FOIA Office too and I can't even imagine how many we would get for that. I'll just leave it open for comments and questions.

ALINA M. SEMO: Jason?

JASON R. BARON: It's Jason. I'm supportive of the recommendation. The recommendation is complicated— A, B—and particularly in the B section, I think it's confusing to mention M-19-21 in the body of the recommendation itself. I think it could be in the text. Certainly it is consistent with but not within the scope of that memorandum to do these actions and the Archivist, again, doesn't have general authority himself to direct agencies to do what is being proposed here under FOIA but he certainly in conjunction with OMB, as we have suggested, in our recommendation one, as well as OGIS in conjunction with DOJ, encourage and request agencies to do this. So, I think there is a language issue here. I think it can be simplified. I'm supportive of the recommendation.

ALINA M. SEMO: Okay. Thank you. Any other comments or questions. Folks on the phone? I want to invite you to chime in if you have any questions or comments. Okay, Emily, Bradley, and Abi—what do you guys want to do in terms of moving forward on this recommendation?

ABI MOSHEIM: We could sit here and try to tweak the language to try to simplify it now or vote in the spirit and get back to tweaking it and put that out there.

BRADLEY WHITE: This is Bradley. I think that's a good idea and I think there is a lot of commonality between this and the third or fourth records management one. So I think we may need to look at buckets as we move forward as well.

ALINA M. SEMO: Okay, then who wants to move for the vote on the spirit of recommendation number five because I'm seeing a lot of nods to the spirit. I have a motion. Do I have a second? Okay, thank you. So, let's vote again. We're voting for the spirit. We will have more language that will be tweaked and circulated to everyone. So, all in favor of the spirit of recommendation number five.

GROUP: Aye.

ALINA M. SEMO: Okay, that's all right. Any nays? On the phone? Any nays around the room? Any abstentions?

BOBBY TALEBIAN: Abstain.

ALINA M. SEMO: Bobby abstains. So we have reviewed our bylaws and they do specifically say that unless we stated in the Federal Register that oral comment from the public is excluded, we will now entertain five to ten minutes of public comment. Then we'll talk about what to do with the Vision subcommittee next. With apologies to the Vision subcommittee. So, please state your name and affiliation.

ALEX HOWARD: Hello, my name is Alex Howard and I'm currently at the Digital Democracy Project at the Demand Progress and Education Fund, it's a non-profit dedicated to open government, transparency, and improving democratic integrity here in the United States. Previously, I worked for the Sunlight Foundation where these issues were present for us. Thank you all for your service and last time I checked this is a volunteer position for people inside and outside of government. It's never been more important to have open, deliberative, discussion of these issues, particularly as Sunshine Week comes through. As someone who gave comment and was a participant in the development of the second National Action Plan, it's good to see a commitment still in force because there are commitments in past plans that are gone. That were developed and were not something that was mandated. And I note in terms of vision and your role, something specific in this. The government will establish a committee comprised of government and non-government members to foster dialog between the Administration and the requester community, solicit public comments, and develop consensus recommendations for improving FOIA administration and proactive disclosures. That's it. That is your mandate. Now it's not legally binding. Right? There is no statute that established it. But the scope and clarity of your recommendations, who you make them to, is not defined here. You could write the President a letter. You could write the Senate a letter. You can ask the Senate why they are not holding any hearings for Sunshine Week. You could send out your own independent assessment of the state of FOIA. You are not constrained by anything but what you define yourselves. And I would encourage you to take that opportunity to make the most of these discussions. I know I am encouraged by how responsive and specific these recommendations are in many senses. But I am also dismayed. What is it that we are still discussing a centralized repository when we have data.gov? Why is it that we are talking about the difficulties of putting things online? 11 percent have no procedures for using FOIA reading rooms as defined by the eFOIA Act back in 1996? Discussing the difficulties of pushing up machine-readable data? Publish machine-readable data on agency websites. Make it searchable by tagging it with metadata and making sure it's accessible and findable. Not just through FOIA.gov or USA.gov or DATA.gov but through

Google's search engine. Through Bing's search engine. Any other place. I would encourage you all to continue to think big. And I'm grateful that you made sure there is an opportunity for public comment as part of your mandate because it is so important to have a massively disaffected public that does not trust government as you can see in the YouTube comments or any discussion of this, and to never miss that opportunity. I would also encourage you to be a little more specific in some of these recommendations and be pointed. It's good to see you as the Director of the Office of Information Policy. Why hasn't OIP put its response to the Senate online from the questions they asked last year? Why aren't we seeing the Chief FOIA Officers Council's report promulgated and pushed up through Justice Department channels? Why isn't the Committee holding itself to account for promulgating these reports through these channels? Through engaging the public with these tools. Recommendation could be pretty straightforward. There seems to be a direct correlation between the increase in lawsuits and the lack of responsiveness from agencies. You could tell agencies to make sure to respond to every FOIA request within 20 days. Now that means acknowledging it. Doesn't mean giving them documents but literally saying you need to do that and if you do you will save the taxpayer's time and money. That is what the requester communities ask. Why isn't that in these recommendations? Why aren't we recommending that the Office of Management and Budget sets and leads on FOIA? Why aren't we recommending that the House provides more oversight and resources where capacity is needed? I ask these questions not to be intentionally provocative but to suggest that there might be some limit here that you are all setting to your recommendations and their scope and the parties that you are addressing them to that are not set by the plan. There is no law here that says you have to exist. There is no law that says how you have to do it. There is a law because you are holding yourself binding with respect to holding a public meeting, right? And the FACA is something that you observe and really care about here. And I will say that the Archives continues to be a national leader in making its public meetings accessible to the public through modern technology. Your meeting information is online. Your agenda is online. You are live-streaming. You have someone listening to the chat. You are taking questions. You are a model for the rest of the U.S. government and I will say that a lot of the U.S. government is not following along. Which is why I protested immediately when you tried to shut that down. Because it has never been more important that you lead and I ask that you continue to do so here. And I look forward to seeing you again during Sunshine Week. Thank you.

ALINA M. SEMO: Alex, thank you very much. Your comments will be noted in the meeting minutes. Jessie, I'm going to turn to you for comments or questions on live stream.

JESSIE KRATZ: I believe that the commenter is referring to the Records Management subcommittee proposal number eight. I'll give you a second to look at that. And the question is: "Without specific wording that the standard is the minimum for access, is there a danger of hampering agencies who will assume they are prevented from providing additional public access despite their wish to do so? Is this not contrary to the public good?"

ALINA M. SEMO: Looking to Jason or Ryan. Do you just want to take that comment and think about it?

JASON R. BARON: Our subcommittee certainly would want to encourage agencies to maximize the elements of standardized data; not minimize it. There was a comment earlier and we're going to take that into account as a subcommittee. But I understand the commenter's concern.

ALINA M. SEMO: Thank you. Jessie, is there anything else? Okay, let's talk for a minute about logistics for next time. So, we do have his meeting on the books for Friday, May 1 at 10 a.m. right here in the

McGowan. But obviously we did not get to the Vision subcommittee with my greatest apologies to Joan and to Chris. So, let's talk logistics about how we want to proceed.

JOAN KAMINER: What are our options? Can we have another meeting?

ALINA M. SEMO: Actually one suggestion we have received is to try to have a virtual meeting. I don't know how feasible that is and I don't know what folk's schedules are like in April to see if we can have an April meeting.

SEAN MOULTON: I can certainly do that but I was also wondering if, and I don't understand the limits, but could the subcommittee have a call that we have done before and have as guests anyone who has concerns or input that they want to raise on the materials that we circulated. Or does that run afoul of a virtual meeting.

KIRSTEN B. MITCHELL: This is Kirsten. You can do that provided that you don't reach a quorum. That is what triggers that requirement that the meeting be public. I believe that is 13 members but I can look it up and mail it around.

EMILY CREIGHTON: This is Emily. So, there are three recommendations from the Vision subcommittee?

ALINA M. SEMO: There are three but each has subparts. So I counted nine total.

EMILY CREIGHTON: So I was wondering if maybe we could by email send comments individually to the subcommittee then have a quicker process with voting at the main meeting. At the very beginning.

ALINA M. SEMO: Sure, in deference to Joan and Chris and the subcommittee I would definitely have them go first.

RYAN LAW: Can I ask what else is on the agenda for the meeting so far?

ALINA M. SEMO: For May 1? Really to the point where the working group has been able to pull together as much as possible to look at the report and vote on parts of it, we can vote on everything we have put together up to that point, and the Vision subcommittee.

RYAN LAW: Okay.

JOAN KAMINER: This is Joan Kaminer. I think I would be comfortable with that approach with reservation on recommendation number three and I think that we have all noted a need for a more robust conversation that extends beyond our subcommittee. We could take the approach on all three recommendations to take written comments but if we could reserve maybe more than just a minimal time at the May meeting for conversation just in anticipation that is going to be needed.

ALINA M. SEMO: Yes, I think that is fair and the working group would certainly have enough time to incorporate the recommendations of the Vision subcommittee that we vote on on May 1 and then we can present that at our last meeting in June. I was trying to avoid that last minute rush that we had in the 2016-2018 term but we are certainly much further along in terms of passing along recommendations and we'll certainly look at buckets. So let's agree that we'll meet on May 1 since that is the consensus that I am getting and everyone has it on the calendars already. And if the subcommittee wants to pass around any finessed or updated or tweaked recommendations feel free to do that.

EMILY CREIGHTON: This is Emily. One other suggestion would be to make the meeting longer. Then you could create that wiggle room.

ALINA M. SEMO: For the May 1 meeting? How do folks feel about that? All Right. Maybe extend it and we might not need it. But maybe make it to 2 o'clock so we have plenty of time for public comments as well as comments that folks want to make. I'm seeing some nods. So, let's adjourn at this point unless there is anything else that anyone wants to bring up. I would like to thank everyone again. Jason has something that he would like to bring up.

JASON R. BARON: I'd like to address what Alex has indicated as thinking big. Just to put on the public record that the Vision subcommittee has been thinking big about proposals for legislation and resources. So, that is a good thing. If we had been talking substantially about the recommendations, I would have gone at greater length that I do believe that the Vision subcommittee should think big about a few more elements that could be part of a set of recommendations for the final document that we are preparing. And the one key one that I just want to put on the records is that I believe the Archivist should work with the White House, and OMB and DOJ to ensure that NARA is involved in the ongoing Federal data strategy discussions at the highest level of government and that FOIA and Federal Records Act issues are considered in the mix. I think we should, as a committee, align ourselves with the highest level plans, agendas, and Federal data strategies that are out there in various documents. And it behooves us to think for the next five to ten years as to how FOIA and how Federal recordkeeping can be harmonized with an attention paid to open government and open data.

ALINA M. SEMO: Okay, thanks for that comment. I know the Vision subcommittee will definitely take that under consideration. Are there any other thoughts or comments before we stand adjourned? Anyone on the phone? Okay, hearing nothing else we stand adjourned. We'll see everyone back here on May 1 which is a Friday not a Thursday. And we will look into the possibility of extending the meeting time which we will put in the Federal Register notice. Thanks everyone for all your hard work. We really appreciate it. Great job.

Adjourned at 1:30 p.m. (EST)