



NATIONAL ARCHIVES *and* RECORDS ADMINISTRATION



*The Freedom of Information Act Ombudsman*  
2022 REPORT FOR FISCAL YEAR 2021

**Office of Government Information Services  
The Freedom of Information Act Ombudsman  
2022 Report for Fiscal Year 2021**

## *Message from the Director*

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With the publication of this 2022 Office of Government Information Services (OGIS) Annual Report to Congress and the President of the United States, I mark my sixth year as OGIS Director. Fiscal year (FY) 2021 continued to pose a number of challenges for the Freedom of Information Act (FOIA) process due to the ongoing COVID-19 pandemic. The year also brought new opportunities, including one on a global scale—in May 2021, I was elected to represent the United States on the first Executive Committee of the International Conference of Information Commissioners (ICIC).<sup>1</sup> I join representatives from six other countries around the globe in leading efforts to protect and promote access to information and to improve transparency and accountability for all.

While OGIS is not an Information Commissioner in the strictest sense of the term, OGIS's voice is an important one in the discussion about protecting and promoting access to information so vital to our democracy. FOIA plays a central role in providing information that helps build trust in our government. In our role as the federal FOIA Ombudsman, OGIS is a neutral and trusted resource and voice for the FOIA process—rather than for any individual or agency—and occupies a unique role in a federal landscape composed of 120 departments and agencies across the federal government, each of which administers their FOIA processes independently.

OGIS's work in FY 2021—and indeed since we opened our doors in 2009—could not have happened without the unwavering support of now retired Archivist of the United States **David S. Ferriero**, who came to the National Archives and Records Administration (NARA) two months after OGIS opened. From his earliest days at the agency's helm, he recognized the importance of open government, transparency and access to government records, and the crucial role FOIA and OGIS play in information access. We are also grateful for our continued partnership with the Chief Records Officer for the U.S. Government, **Laurence Brewer**, and his staff, with whom we have continued to work to underscore the critical link between FOIA and records management.

We are pleased to share with you this report on our work over the last fiscal year, as well as legislative recommendations we believe will improve the administration of FOIA overall. As

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<sup>1</sup> <https://www.informationcommissioners.org/meet-the-executive-committee/>.

always, we look forward to hearing your thoughts and continuing vital conversations about FOIA.

Sincerely,

A handwritten signature in black ink, appearing to read "Alina M. Semo". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Alina M. Semo, Director  
Office of Government Information Services\*

\*(The views expressed in this report are those of the OGIS Director and do not necessarily represent the views of the President, 5 U.S.C. § 552(h)(4)(C).)

## Executive Summary

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In our role as the federal Freedom of Information Act (FOIA) Ombudsman, OGIS serves as a resource for information and assistance about the FOIA process. By listening to stakeholders and observing the FOIA process in action, we help to “resolve disputes ... as a nonexclusive alternative to litigation.”<sup>2</sup> By allowing our casework and assessments to serve as a FOIA barometer and studying a range of FOIA issues, we fulfill Congress’s mandate to review FOIA policies, procedures and compliance, and identify procedures and methods for improving compliance with FOIA.<sup>3</sup> By speaking about systemic change in a variety of ways, we are fulfilling Congress’s mandate to “identify procedures and methods for improving compliance” with FOIA.<sup>4</sup> Running through all of our work is holding space for vital and sometimes difficult conversations to occur—a vital core ombudsman function. Our work is guided by commonly accepted ombuds standards, which create pillars that bolster all of our functions.<sup>5</sup>

Among our activities in FY 2021:

- Handling approximately 4,200 requests for assistance—from both FOIA requesters and agencies.
- Responding to the COVID-19 pandemic by assisting requesters and agencies—both individually through our ombudsman services and systemically through events such as the forum for FOIA requesters that we co-hosted with the Centers for Disease Control and Prevention.
- Publishing an assessment on how well agencies use their FOIA websites to communicate with FOIA requesters about pandemic-related delays, a follow-up to an assessment we did early in the pandemic.
- Publishing two assessments to fulfill recommendations made by the 2016–18 and 2018–20 terms of the FOIA Advisory Committee: the first on the processes agencies use to make documents available on agency websites, and the second on common categories of records requested frequently under FOIA and/or Privacy Act by—or on behalf of—individuals seeking records about themselves.

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<sup>2</sup> 5 USC § 552(h)(3).

<sup>3</sup> 5 USC §§ 552(h)(2)(A)-(B).

<sup>4</sup> 5 USC § 552(h)(2)(C).

<sup>5</sup> See, e.g., standards of practice outlined by the [International Ombuds Association \(IOA\)](#) and the [US Ombudsman Association \(USOA\)](#).

- Leading and managing the FOIA Advisory Committee and delivering one mid-term recommendation to the Archivist of the United States on expanding access to records created by congressional support offices.
- Launching a virtual training program on negotiation for FOIA professionals.
- Continuing our partnership with the National Archives and Records Administration's Office of the Chief Records Officer (CRO) for the U.S. Government by asking all federal agencies questions about e-discovery tools, information technology, and the COVID-19 pandemic's effect on their FOIA processes.

## *OGIS's Role as the FOIA Ombudsman*

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Congress created our office to serve as the federal government's FOIA Ombudsman.<sup>6</sup> FOIA authorizes our office to review agencies' policies, procedures, and compliance with the FOIA and to offer mediation services to resolve disputes between FOIA requesters and agencies. We use these mandates, along with the ombuds standards of independence, impartiality, and confidentiality,<sup>7</sup> to identify procedures and methods to improve overall compliance with the FOIA.

We advocate for the FOIA process itself rather than individual FOIA stakeholders. Our unique role and position in the FOIA process allows us to hear from a variety of stakeholders, from the least experienced to seasoned FOIA requesters. We also hear from agencies—in particular, the hardworking FOIA professionals who invite us to help them improve the efficiency of their programs and the quality of their communications with requesters. By observing how FOIA functions across the government, we are able to help identify best practices in FOIA and develop recommendations to improve the overall FOIA process. We listen to and observe the FOIA process in action, hold space for vital, and sometimes difficult, conversations to occur, and raise awareness regarding broad systemic issues ripe for attention and change.

Our work is guided by commonly accepted ombuds standards, which create pillars that bolster all of our functions:

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<sup>6</sup> See S. Rep. 114-4 at 2 (2015).

<sup>7</sup> See 2016 Administrative Conference of the United States (ACUS) Recommendation 2016-5, [“A Reappraisal – The Nature and Value of Ombudsmen in Federal Agencies, Part 2: Research Report.”](#)

- OGIS is independent in that we are separate from individual agency FOIA programs, and we can submit reports, recommendations, testimony or comments about the FOIA directly to Congress without prior approval from any federal officer or agency.
- OGIS maintains impartiality by advocating for a fair and equitably administered FOIA process rather than advocating for the interests of either agencies or FOIA requesters.
- As a trusted third party, OGIS's work is confidential: we protect the identities of—and communications with—those who seek our assistance, and we pursue some FOIA issues systemically rather than individually.

## *Listening to Stakeholders Through Dispute Resolution*

The FOIA statute mandates that OGIS “offer mediation services to resolve disputes between persons making [FOIA] requests ... and administrative agencies as a nonexclusive alternative to litigation.”<sup>8</sup> Demand for OGIS's services remained very strong in FY 2021: we received 4,200 requests for assistance and closed more than 4,100 cases, including many cases from previous years.

Although OGIS was created as an alternative to litigation, many of the conflicts or difficulties that requesters encounter during the FOIA process and bring to OGIS are not necessarily ripe for litigation. We strive to meet requesters where they are in the process—whether it is explaining the FOIA process to a first-time requester or attempting to reopen communication between an experienced requester and an agency. We also strive to meet agencies where they are in the process and help develop ways agencies can better communicate with requesters.<sup>9</sup>

Providing dispute resolution services does more than allow our office to assist individual FOIA requesters and agencies. Through our dispute resolution work, we gather firsthand information about the challenges faced by FOIA requesters and federal agencies. Our caseload and the types of issues we see when we work on individual mediation cases serve as a barometer for the FOIA process governmentwide and provide us with a valuable mechanism for listening to—and observing the experiences of—FOIA requesters.

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<sup>8</sup> 5 U.S.C. § 552(h)(3).

<sup>9</sup> See Professor Gbemende Johnson's *The FOIA Ombudsman* Blog Post, [Thinking About OGIS's Work: An Academic Perspective](#) (Jan. 31, 2022).

Throughout the COVID-19 pandemic, the top concern of requesters and FOIA processors has been delays, and we have experienced a sharp increase in the number of submissions related to delayed FOIA requests. We saw the number of requests for OGIS assistance involving delays jump 73 percent in FY 2021—and for 85 percent of those requests for assistance involving delays, a requester asked for and was unable to obtain an estimated date of completion from the agency.

When Congress amended FOIA with the OPEN Government Act of 2007, it included a provision requiring agencies to “establish a telephone line or Internet service that provides information about the status of a request to the person making the request ... including ... an estimated date on which the agency will complete action on the request.”<sup>10</sup> The 2007 FOIA amendments also require agencies to provide “an estimated date on which the agency will complete action on the request.”<sup>11</sup> Despite this requirement in the FOIA statute, many requesters contacted OGIS because they were unable to obtain an estimated date of completion for a pending request. In many of these cases, OGIS’s assistance took the form of contacting the agency’s FOIA staff to obtain an estimated date of completion. As we offered this individualized assistance, we observed patterns in our cases and offered assistance on a broader level where appropriate. For example, OGIS was contacted by a number of individuals seeking the status of delayed requests. In one instance, OGIS worked with agency FOIA staff to develop standard language for requesters explaining that responsive records are housed in federal records centers currently closed due to the COVID-19 pandemic. In this way, OGIS helped the agency better understand the needs of the requester, and the requester better appreciate the obstacles faced by the agency.

## ***Holding Space for Vital Conversations***

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As a trusted neutral resource for FOIA stakeholders, OGIS provides a venue for important conversations about FOIA. In FY 2021, we hosted a wide range of public events, which were held virtually and simultaneously live streamed on the [National Archives YouTube channel](#).

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<sup>10</sup> 5 U.S.C. § 552(a)(7)(B).

<sup>11</sup> 5 U.S.C. § 552(a)(7)(B)(ii).

## *Public Events*

The thread that runs through all of our work is building trust in the FOIA process by holding space for vital and sometimes difficult conversations to occur and using what we learn to raise awareness regarding broad, systemic issues ripe for attention and change. OGIS runs its public meetings [online](#) to allow for public comment and engagement. We ensure that our [website](#) contains updated information regarding all of our activities—including detailed information about the work of the FOIA Advisory Committee and Chief FOIA Officers Council, our compliance work, annual reports, and [upcoming events](#). And we maintain a constant social media presence through our blog ([The FOIA Ombudsman](#)) and our [Twitter account](#). We have endeavored to be as accessible as possible—particularly during the pandemic—and it has broadened our reach to our stakeholders.

While the COVID-19 pandemic created a number of challenges for agency FOIA programs, it also presented an opportunity for FOIA professionals to discuss and share solutions and best practices. OGIS hosted a number of these conversations, beginning with a best practices workshop on FOIA administration during the pandemic, co-hosted with the U.S. Department of Justice Office of Information Policy (OIP) and the Technology Committee of the Chief FOIA Officers (CFO) Council.

As we noted in our FY 2020 report, the COVID-19 pandemic presented a particular challenge for intelligence agency FOIA personnel, many of whom were unable to access classified systems containing records while working from home. In March 2021, OGIS, OIP, and the CFO Council's Technology Committee hosted an Intelligence Community Best Practices Workshop to discuss these issues.

In May 2021, the Centers for Disease Control and Prevention (CDC) collaborated with OGIS on a follow-up to its successful FY 2020 requester forum. This event focused on how the agency's FOIA program conducts electronic searches in response to FOIA requests and provided valuable insights to requesters on how to submit more targeted FOIA requests. This was a particularly useful topic for requesters seeking records about the pandemic from an agency deeply involved in the pandemic efforts.

OGIS's event celebrating Sunshine Week at the National Archives has become an important fixture in the nationwide celebration of transparency. In FY 2021, OGIS hosted a conversation with Senior U.S. District Judge Royce C. Lamberth on open government and the legal landscape, and a conversation with users of FOIA. We also collaborated with the Office of the Chief



Records Officer of the United States on a [tip sheet](#) for agency records managers and FOIA professionals.

### *Receiving Comments from Stakeholders*

As Congress mandated with the passage of the FOIA Improvement Act of 2016, the Directors of OGIS and OIP co-chair the CFO Council.<sup>12</sup> We convened this Council, its committees, subcommittees, and working groups numerous times throughout FY 2021, including two full Council meetings (November 5, 2020, and April 29, 2021). We also held an Artificial Intelligence (AI) 101 webinar to provide agency FOIA professionals with a primer on different types of AI and AI-related tools, key terms, and potential applications to the FOIA administrative process.

The OGIS Director also chairs the FOIA Advisory Committee, established by the Archivist of the United States in 2014 in accordance with the [U.S. Second Open Government National Action Plan](#), released on December 5, 2013. The Committee’s work helps us fulfill the directive in FOIA that OGIS “identify procedures and methods for improving compliance” with FOIA.<sup>13</sup> This Committee, composed of 20 members from a variety of federal departments and agencies and the requester community, are appointed by the Archivist of the United States to study the FOIA landscape and make recommendations for improvements. Now in its fourth term, the 2020–22 FOIA Advisory Committee members formed four subcommittees—Classification, Legislation, Process, and Technology—and each met regularly to study issues, hear from experts, and develop recommendations and best practices to present to the full Committee for further deliberation.

OGIS’s role in hosting important conversations includes receiving input from all stakeholders. We have received and posted numerous public comments in connection with our Annual Open Meeting, the FOIA Advisory Committee, and the CFO Council.

### *Providing Targeted Training*

Over the last decade, OGIS’s “Dispute Resolution Skills for FOIA Professionals” training program has been a valuable resource and forum for FOIA professionals. Although the COVID-19 pandemic prevented OGIS from hosting this popular training program in person, we launched a pilot online version of our training in FY 2021 for one agency. Reviews of the training were favorable, and we are rolling out our virtual training more broadly in FY 2022.

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<sup>12</sup> 5 USC § 552(k).

<sup>13</sup> 5 U.S.C. § 552(h)(2)(C).

## *Identifying and Addressing Systemic Issues*

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OGIS uses several important channels of communication to identify and address systemic issues: our congressionally mandated compliance program, the CFO Council, and the FOIA Advisory Committee. While each is distinct, they collectively raise broad systemic issues ripe for attention and change. In FY 2021, we identified and discussed several important issues facing FOIA programs. Another important tool is our congressional mandate to make recommendations to Congress and the President for improving the FOIA process, which we address further below.

### *Communications During COVID-19*

Not long after the pandemic began in 2020, we assessed how well agencies were communicating with requesters on their websites regarding how the COVID-19 pandemic was affecting agency FOIA processing. Our [review](#) of FOIA websites for 305 Cabinet-level departments and their components as well as independent agencies in May and June 2020 showed that a majority of agency FOIA websites—nearly 63 percent—did not provide updates on how COVID-19 was affecting FOIA processing. As we were conducting our assessment, the U.S. Department of Justice’s Office of Information Policy issued [guidance](#) encouraging agencies to use their websites to inform requesters about processing delays related to the pandemic and the most efficient way to submit requests. We followed our initial assessment in October 2020 and [found](#) that 81 percent of FOIA programs that received more than 10,000 FOIA requests in FY 2019 used their websites to notify requesters about pandemic-related delays. Our assessments offered snapshots in time and highlighted the importance of communicating with requesters through agency websites, which are often the first point of access for FOIA requesters.

### *Issue Assessments*

OGIS published two issue assessments in FY 2021 on FOIA libraries/reading rooms and first-party requests.

In response to a [recommendation](#) from the 2016–18 term of the FOIA Advisory Committee, the Archivist of the United States directed OGIS to assess the methods agencies use to prepare documents for posting on agency FOIA reading rooms. The assessment, [Methods Agencies Use to Prepare Documents for Posting on Agency Freedom of Information Act \(FOIA\) Websites](#), the most comprehensive government report on the issue, examines the process of making documents available on agency websites, a responsibility that often falls to FOIA staff. The

assessment also identifies 18 best practices for agencies to reference as they evaluate the use and success of their own libraries.

In response to a [recommendation](#) from the 2018–20 term of the FOIA Advisory Committee, we published an assessment, [Commonly Requested Categories of First-party Records](#), which identifies common categories of records requested frequently under FOIA and/or Privacy Act by—or on behalf of—individuals seeking records about themselves. Each day, individuals use the FOIA process to obtain their own records as they navigate health care, employment, immigration, law enforcement, or other issues that intersect in some way with the federal government. Such first-party requests, to varying degrees, cut across all federal agencies.

### *Records Management Self-Assessment*

For the sixth consecutive year, we partnered with our NARA colleagues in the Office of the Chief Records Officer for the U.S. Government (CRO) on the Records Management Self-Assessment (RMSA), an annual survey to determine whether federal agencies are complying with statutory and regulatory records management requirements. Our partnership with the CRO has allowed us to expand our review of agency FOIA policies and procedures by asking targeted questions that help us identify potential compliance issues that merit further exploration.

The 2020 RMSA survey, with a 98 percent response rate and administered to agency records officers from January 19, 2021, to March 19, 2021, included several questions regarding the challenges of administering FOIA during the pandemic.

[Key results](#) include:

- Nearly half of all respondents (49 percent) reported that the COVID-19 pandemic disrupted their agency’s ability to respond to FOIA requests.
- A majority of respondents (80 percent) whose FOIA programs were disrupted reported that their agency’s paper records were inaccessible due to office closures, while nearly half (46 percent) reported that agency staff were not available to search for records.
- A majority of respondents (72 percent) reported that their agencies worked directly with requesters to tailor their requests for most efficient processing during the COVID-19 pandemic.
- Fifty-six percent said that they included information about anticipated delays in requester communications, including acknowledgement letters; 52 percent assessed their technology to ensure the most efficient administration of FOIA; and 50 percent

reported that their agencies posted notices on their FOIA websites informing requesters of the most efficient ways to make requests.

## ***Recommendations to Congress***

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The FOIA statute authorizes OGIS to submit “[l]egislative and regulatory recommendations, if any, to improve the administration of FOIA.” 5 U.S.C. § 552(h)(4)(A)(iii). In this report, we make one new recommendation to Congress and reaffirm several other recommendations that we have made in the past that continue to be ripe for consideration.

### **Recommendation No. 1:**

*Congress should adopt rules or enact legislation to establish procedures for effecting public access to legislative branch records in the possession of congressional support offices and agencies modeled after those procedures contained in the Freedom of Information Act. These should include requirements for proactive disclosure of certain information, procedures governing public requests for records, time limits for responding to requests, exemptions to be narrowly applied, and an appeal from any initial decision to deny access.*

### *Discussion*

For the first time since it was established in 2014, the FOIA Advisory Committee made a recommendation halfway through its two-year term, in June 2021, involving congressional records. On May 15, 2022, we sent a letter to the Chairs and ranking members of the Senate Committee on the Judiciary and the House Committee on Oversight and Reform regarding this recommendation. With this report, we transmit this recommendation to all members of Congress.

In the Final Report and Recommendations of the 2018–20 Freedom of Information Act Advisory Committee to the Archivist of the United States, the Committee proposed:

*In the spirit of expanding the reach of FOIA, we believe that the next term of the Committee should give due consideration to the possibility of extending some aspects of FOIA to parts of the legislative and judicial branches.*

The Legislation Subcommittee of the 2020–22 term of the Committee carefully studied this issue; the full Committee passed the recommendation on June 13, 2021, and the now-retired Archivist of the United States, David S. Ferriero, accepted the [recommendation](#).

It is important to note that the Committee did not recommend that the records of Congress, its committees, or individual member offices be covered by such disclosure procedures. The Subcommittee also recognized that in many ways, the legislative branch has been among the most transparent of the three branches of government and in recent decades has taken additional steps to increase public access to its work. As the Committee noted and we reemphasize, congressional support offices are funded by taxpayer dollars and “perform functions similar or even identical to those performed by executive branch entities that are fully covered by FOIA, such as law enforcement (Capitol Police); auditing, buildings, and grounds maintenance (Architect of the Capitol); inspecting and adjudicating (Government Accountability Office); budgeting (Congressional Budget Office); publishing (Government Publishing Office); enforcing rights (Office of Congressional Workplace Rights); maintaining the library (Library of Congress); and performing research and drafting reports (Congressional Research Service).”

**Recommendation No. 2:**

*OGIS recommends that Congress pass legislation to provide agencies with sufficient resources to comply with the requirements of both FOIA and Section 508 of the Rehabilitation Act of 1973, as amended, especially as they relate to proactive posting of large numbers of records.*

*Discussion*

In our 2019 OGIS Annual Report on FY 2018 and again in our 2021 OGIS Annual Report on FY 2020, we made this specific recommendation to Congress and included three possible legislative options. We continue to observe agencies struggling with balancing the requirements of both statutes—and we again renew our recommendation in this report.

As we noted in our 2019 Annual Report, the FOIA Improvement Act of 2016 amended FOIA to require that agencies proactively release certain records, including any record that has been requested three or more times.<sup>14</sup> Section 508 of the Rehabilitation Act requires, among other things, that all records posted to agency websites be accessible to people with disabilities, unless doing so would pose an “undue burden” on the agency.<sup>15</sup> In order for a document to be accessible, it must meet specific requirements. These requirements include that the text be machine-readable and that any charts, graphs, pictures, or tables in the document are tagged and described in a way that enables the screen reader to accurately describe a document to a reader with visual impairments.

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<sup>14</sup> 5 U.S.C. § 552 (a)(2)(D)(ii)(II).

<sup>15</sup> 29 U.S.C. § 794d(a)(1)(A).

The procedures and tools often used by agencies to process records for public release under FOIA strip away metadata and other features that make those records accessible and Section 508-compliant. Agencies often lack the resources to remediate these records to meet Section 508 requirements. This conflict between current FOIA processing technology and Section 508 compliance prevents a number of agencies from proactively disclosing records.

Some agencies rely on their IT staff to ensure 508 compliance; other agencies leave that task to FOIA professionals who are already fully occupied reviewing and releasing records responsive to other requests; and some agencies contract out these services. Currently, we know of no software solutions that can fully automate the process of making records 508 compliant.

Both the first term (2014–16) and the second term (2016–18) of the FOIA Advisory Committee identified the potential conflict between proactive disclosure requirements and Section 508 compliance as a major technological, logistical, and resource challenge that needs to be addressed. During the Committee’s first term, a subcommittee studied the issue. The second term produced a specific recommendation to the Archivist of the United States—that legislation is needed to clarify agencies’ Section 508 requirements, especially as they relate to proactive posting of large numbers of records, by ensuring “that agencies have sufficient resources to meet both accessibility and proactive disclosure requirements.”

In our report two years ago, we advanced three possible, non-mutually exclusive, legislative options in connection with this recommendation. We renew our recommendation that Congress look into the feasibility of the options below—or consider other solutions to this problem.

- 1. Pass authorizing legislation and appropriations that specifically tasks and funds the U.S. Digital Service within the Executive Office of the President and/or the General Services Administration, to assemble and lead a team of individuals with requisite disciplines and knowledge to develop tools that will assist agencies to make their records Section 508 compliant and accessible. This could include, but not be limited to, writing a new source code that may be made available to agencies through <https://www.code.gov/>.*
- 2. Pass authorizing legislation and appropriations that tasks and funds a suitable federal entity or organization—such as the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) within the U.S. Department of Health and Human Services (HHS)—with administering a grant program aimed at developing technologies or tools for public use that would*

*automate the process of making agency documents 508 compliant.*

- 3. Pass legislation providing that, in lieu of proactively posting 508-compliant FOIA documents, agencies may instead post a 508-compliant index of documents. Individuals could then request 508-compliant copies of documents listed in the index.*

**Recommendation No. 3:**

*Congress should consider asking GAO to pinpoint either systemic or specific compliance issues that Congress could then address in a more targeted, surgical fashion, either through hearings or additional inquiries.*

*Discussion*

The 2018–20 term of the FOIA Advisory Committee recommended that the Archivist task OGIS with asking Congress to (1) engage in regular and robust oversight of FOIA, hold more hearings, establish regular and coordinated communication with agencies, and strengthen OGIS with clearer authority and expanded resources (*Recommendation No. 2020-19*); and (2) address funding for agency FOIA programs and ensure that agencies have sufficient resources to comply with FOIA (*Recommendation No. 2020-20*).

With regard to *Recommendation No. 2020-19*, as the Committee explained in its final report, “in the absence of oversight from Congress, FOIA otherwise lacks a sustaining enforcement mechanism. It is incumbent upon Congress to ensure that our country has a robust, well-funded, and carefully considered overall FOIA program to deliver the transparency and accountability that the American people deserve and expect.” The final report provides specific recommendations for ways that oversight could be achieved, including increased hearings and inquiries as to agency performance.

While we support regular and coordinated communication between Congress and federal agencies, having more hearings and formal inquiries may not necessarily achieve the intended result of robust, well-funded, and carefully considered FOIA programs. Oversight in the form of additional hearings and inquiries risks imposing additional burdens on agency FOIA programs that are already straining to respond to FOIA requests. We do believe that increased oversight should start with the U.S. Government Accountability Office (GAO), just as the FOIA statute specifically contemplates.<sup>16</sup>

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<sup>16</sup> 5 U.S.C. § 552(h).

**Recommendation No. 4:**

*Congress should consider asking GAO to conduct a study of the funding for agency FOIA programs to determine whether agencies have adequate funding to comply with FOIA and respond to requests in a timely manner, and what additional resources agencies in fact need in order to improve the FOIA process overall. OGIS has gained a significant amount of experience in assessing agency FOIA programs and stands ready and available to assist GAO with these efforts.*

*Discussion*

With regard to the FOIA Advisory Committee’s *Recommendation No. 2020-20*, we fully support any efforts in Congress to increase funding for agency FOIA programs that demonstrate the need and can document how they will use increased funding to improve the FOIA process, including decreasing backlogs and increasing efficiency and effectiveness. We note, in particular, that the 2018–20 term of the Committee recommended that agencies “conduct a comprehensive review of their technological and staffing capabilities within two years to identify the resources needed to respond to current and anticipated future FOIA demands.” (*Recommendation No. 2020-13*). Such a review, we believe, would put agency FOIA programs on a firm footing for asking their agency leadership and Congress for more resources in a more targeted fashion.

***OGIS Staff***

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<b>Mediation Team</b>	Carrie McGuire (Lead) Dwayne Bacon Jessica Hartman



## Appendix

FOIA requires OGIS to report “the number of times each agency engaged in dispute resolution with the assistance of [OGIS] or the FOIA Public Liaison,” 5 U.S.C. §552(h)(4)(A)(ii)(II). The chart below provides that information for fiscal year (FY) 2021.

The total number of OGIS cases does not equal the total number of cases OGIS handled in FY 2021 because some cases involved multiple agencies or requests. In other cases, mostly involving telephone calls, the name of the agency was not relevant to the issue and OGIS did not note the agency name.

Department/Agency	No. of OGIS cases in FY 2021	No. of times requesters sought assistance from the agency FOIA Public Liaison in FY 2021 <sup>17</sup>
Department of Justice	868	31,982
Department of Homeland Security	654	13,971
Department of Defense	225	2,000
Department of Health and Human Services	139	500
Social Security Administration	137	7,310
Department of Veterans Affairs	125	392
Department of State	89	1,200
Department of the Interior	73	40
Small Business Administration	70	2,000
Equal Employment Opportunity Commission	60	456
Central Intelligence Agency	53	Unknown
Department of Labor	51	490
Department of the Treasury	50	1,500
National Archives and Records Administration	41	2,084
Securities and Exchange Commission	32	10

<sup>17</sup> From [2022 Chief FOIA Officer Reports](#). N/A means that the agency processed 50 or fewer requests in FY 2021 and thus was not asked to report on requesters seeking assistance from the FOIA Public Liaison. (See “[Guidelines for 2022 Chief FOIA Officer Reports](#)”).

Department/Agency	No. of OGIS cases in FY 2021	No. of times requesters sought assistance from the agency FOIA Public Liaison in FY 2021 <sup>18</sup>
Department of Transportation	27	302
Environmental Protection Agency	25	60
Department of Housing and Urban Development	16	4
Office of Personnel Management	16	30
Department of Agriculture	13	39
Department of Commerce	12	86
Pension Benefit Guaranty Corporation	9	8
Executive Office of the President: Office of Management and Budget	8	2
Consumer Financial Protection Bureau	7	180
Department of Energy	6	27
Tennessee Valley Authority	6	2
Department of Education	6	156
National Transportation Safety Board	6	0
Federal Communications Commission	6	48
General Services Administration	5	200
Federal Housing Finance Agency	3	0
Federal Trade Commission	3	55
National Aeronautics and Space Administration	3	14
National Labor Relations Board	3	144
Amtrak	2	10
National Science Foundation	2	1
Office of Special Counsel	1	157

<sup>18</sup> From [2022 Chief FOIA Officer Reports](#). N/A means that the agency processed 50 or fewer requests in FY 2021 and thus was not asked to report on requesters seeking assistance from the FOIA Public Liaison. (See "[Guidelines for 2022 Chief FOIA Officer Reports](#)").

Department/Agency	No. of OGIS cases in FY 2021	No. of times requesters sought assistance from the agency FOIA Public Liaison in FY 2021 <sup>19</sup>
Board of Governors of the Federal Reserve System	1	10
Merit Systems Protection Board	1	5
Nuclear Regulatory Commission	1	0
Office of the Director of National Intelligence	1	75
Executive Office of the President: Office of the U.S. Trade Representative	1	68
Federal Election Commission	1	1
Federal Energy Regulatory Commission	1	50
Surface Transportation Board	1	N/A
U.S. Agency for International Development	1	<10
U.S. Commission for the Preservation of America's Heritage Abroad	1	N/A
U.S. Commission on Civil Rights	1	N/A
Peace Corps	0	5
Commodity Futures Trading Commission	0	10
Federal Deposit Insurance Corporation	0	5
U.S. Consumer Product Safety Commission	0	120
Council of Inspectors General on Integrity and Efficiency	0	10
Executive Office of the President: Office of Science and Technology Policy	0	Unknown
Federal Labor Relations Authority	0	Unknown
Federal Retirement Thrift Investment Board	0	N/A
National Credit Union Administration	0	0
National Endowment for the Humanities	0	0

<sup>19</sup> From [2022 Chief FOIA Officer Reports](#). N/A means that the agency processed 50 or fewer requests in FY 2021 and thus was not asked to report on requesters seeking assistance from the FOIA Public Liaison. (See "[Guidelines for 2022 Chief FOIA Officer Reports](#)").

Department/Agency	No. of OGIS cases in FY 2021	No. of times requesters sought assistance from the agency FOIA Public Liaison in FY 2021 <sup>20</sup>
Occupational Safety and Health Review Commission	0	4
U.S. Agency for Global Media	0	3
Administrative Conference of the United States	0	N/A
Advisory Council on Historic Preservation	0	N/A
American Battle Monuments Commission	0	N/A
Appraisal Subcommittee	0	N/A
Armed Forces Retirement Home	0	N/A
Chemical Safety and Hazard Investigation Board	0	0
Commission of Fine Arts	0	N/A
Committee for Purchase from People Who Are Blind or Severely Disabled	0	N/A
Corporation for National and Community Service	0	N/A
Court Services and Offender Supervision Agency	0	4
Defense Nuclear Facilities Safety Board	0	N/A
Denali Commission	0	N/A
Executive Office of the President: Council on Environmental Quality	0	10
Executive Office of the President: Office of National Drug Control Policy	0	Unknown
Export-Import Bank	0	6
Farm Credit Administration	0	N/A
Farm Credit System Insurance Corporation	0	N/A
Federal Financial Institutions Examination Council	0	N/A
Federal Maritime Commission	0	N/A

<sup>20</sup> From [2022 Chief FOIA Officer Reports](#). N/A means that the agency processed 50 or fewer requests in FY 2021 and thus was not asked to report on requesters seeking assistance from the FOIA Public Liaison. (See "[Guidelines for 2022 Chief FOIA Officer Reports](#)").

Department/Agency	No. of OGIS cases in FY 2021	No. of times requesters sought assistance from the agency FOIA Public Liaison in FY 2021 <sup>21</sup>
Federal Mediation and Conciliation Service	0	2
Federal Mine Safety and Health Review Commission	0	N/A
Federal Open Market Committee	0	N/A
Gulf Coast Ecosystem Restoration Council	0	N/A
Harry S. Truman Scholarship Foundation	0	N/A
Institute of Museum and Library Services	0	N/A
Inter-American Foundation	0	N/A
James Madison Memorial Fellowship Foundation	0	N/A
Legal Services Corporation	0	N/A
Marine Mammal Commission	0	N/A
Millennium Challenge Corporation	0	N/A
Morris K. Udall Foundation	0	N/A
National Capital Planning Commission	0	N/A
National Commission on Military, National, and Public Service	0	N/A
National Council on Disability	0	N/A
National Endowment for the Arts	0	N/A
National Indian Gaming Commission	0	N/A
National Mediation Board	0	N/A
Neighborhood Reinvestment Corporation	0	N/A
Nuclear Waste Technical Review Board	0	N/A
Office of Government Ethics	0	24
Office of Navajo and Hopi Indian Relocation	0	N/A
U.S. International Development Finance Corporation	0	N/A

<sup>21</sup> From [2022 Chief FOIA Officer Reports](#). N/A means that the agency processed 50 or fewer requests in FY 2021 and thus was not asked to report on requesters seeking assistance from the FOIA Public Liaison. (See "[Guidelines for 2022 Chief FOIA Officer Reports](#)").

Department/Agency	No. of OGIS cases in FY 2021	No. of times requesters sought assistance from the agency FOIA Public Liaison in FY 2021 <sup>22</sup>
Postal Regulatory Commission	0	N/A
Presidio Trust	0	N/A
Privacy and Civil Liberties Oversight Board	0	N/A
Railroad Retirement Board	0	0
Selective Service System	0	N/A
Social Security Advisory Board	0	N/A
Special Inspector General for Afghanistan Reconstruction	0	N/A
U.S. AbilityOne Commission	0	N/A
U.S. Access Board	0	N/A
U.S. African Development Foundation	0	N/A
U.S. Copyright Office	0	N/A
U.S. Election Assistance Commission	0	N/A
U.S. Institute of Peace	0	N/A
U.S. Interagency Council on Homelessness	0	N/A
U.S. International Boundary and Water Commission	0	0
U.S. International Trade Commission	0	N/A
U.S. Trade and Development Agency	0	N/A

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