

## 2021 Current Fiscal Year Report: Freedom of Information Act Advisory Committee

Report Run Date: 05/12/2021 06:14:42 AM

<b>1. Department or Agency</b>		<b>2. Fiscal Year</b>	
National Archives and Records Administration		2021	
<b>3. Committee or Subcommittee</b>		<b>3b. GSA Committee No.</b>	
Freedom of Information Act Advisory Committee		2493	
<b>4. Is this New During Fiscal Year?</b>	<b>5. Current Charter</b>	<b>6. Expected Renewal Date</b>	<b>7. Expected Term Date</b>
No	05/21/2020	05/21/2022	
<b>8a. Was Terminated During FiscalYear?</b>	<b>8b. Specific Termination Authority</b>	<b>8c. Actual Term Date</b>	
No			
<b>9. Agency Recommendation for Next FiscalYear</b>	<b>10a. Legislation Req to Terminate?</b>	<b>10b. Legislation Pending?</b>	
Continue	No	Not Applicable	
<b>11. Establishment Authority</b> Agency Authority		<b>13. Effective Date</b>	<b>14. Committee Type</b>
<b>12. Specific Establishment Authority</b>		<b>14c. Presidential?</b>	
Second Open Government National Action Plan		12/05/2013	Continuing
<b>15. Description of Committee</b> National Policy Issue Advisory Board			No
<b>16a. Total Number of Reports</b>	No Reports for this FiscalYear		
<b>17a. Open</b> 1	<b>17b. Closed</b> 0	<b>17c. Partially Closed</b> 0	<b>Other Activities</b> 0
<b>17d. Total</b> 1			

### Meetings and Dates

Purpose	Start	End
This will be the second meeting of the fourth committee term. The purpose of this meeting will be to hear a presentation about FOIA and classified records; to hear updates from the four Subcommittees: Classification, Legislation, Process, and Technology; and to discuss the COVID-19 pandemic's effects on FOIA processing.	12/10/2020	12/10/2020

### Number of Committee Meetings Listed: 1

	Current FY	Next FY
<b>18a(1). Personnel Pmts to Non-Federal Members</b>	\$0.00	\$0.00
<b>18a(2). Personnel Pmts to Federal Members</b>	\$0.00	\$0.00
<b>18a(3). Personnel Pmts to Federal Staff</b>	\$0.00	\$0.00
<b>18a(4). Personnel Pmts to Non-Member Consultants</b>	\$0.00	\$0.00
<b>18b(1). Travel and Per Diem to Non-Federal Members</b>	\$0.00	\$0.00
<b>18b(2). Travel and Per Diem to Federal Members</b>	\$0.00	\$0.00
<b>18b(3). Travel and Per Diem to Federal Staff</b>	\$0.00	\$0.00

<b>18b(4). Travel and Per Diem to Non-member Consultants</b>	\$0.00	\$0.00
<b>18c. Other(rents,user charges, graphics, printing, mail, etc.)</b>	\$0.00	\$0.00
<b>18d. Total</b>	\$0.00	\$0.00
<b>19. Federal Staff Support Years (FTE)</b>	0.00	0.00

**20a. How does the Committee accomplish its purpose?**

The Advisory Committee serves as deliberative body to advise on improvements to FOIA administration by studying the current FOIA landscape across the Executive Branch and may recommend legislative action, policy changes or executive action, among other matters.

**20b. How does the Committee balance its membership?**

The Committee consists of 20 voting members considered to be FOIA experts from both inside and outside government. Other Balance Factors. Government members of the Committee will include, at a minimum, three FOIA professionals from Cabinet-level Departments; four FOIA professionals from Cabinet-level Departments; four FOIA professionals from non-Cabinet agencies; one representative from the Department of Justice, Office of Information Policy; and one representative from NARA.

Non-governmental members of the Advisory Committee will include, at a minimum, three individuals representing the interests of non-governmental organizations that advocate on FOIA matters; two individuals representing the interests of FOIA requesters who qualify for the "all other" FOIA requester fee category; one individual representing the interests of requesters who qualify for the "news media" FOIA requester fee category; one individual representing the interests of requesters who qualify for the "commercial" FOIA requester fee category; one individual representing the interests of historians and history-related organizations; and one individual representing the interests of academia.

**20c. How frequent and relevant are the Committee Meetings?**

The Committee meets quarterly to hear from experts on FOIA issues as well as hear updates from subcommittees and discuss issues. Additional meetings may be called as necessary. In FY 2020, the Committee met 5 times.

**20d. Why can't the advice or information this committee provides be obtained elsewhere?**

The Committee is established in accordance with the National Action Plan (NAP) and the directive in the Freedom of Information Act, 5 U.S.C. § 552(h)(4)(A)(iii), that the Office of Government Information Services (OGIS) make "legislative and regulatory recommendations ... to improve the administration" of the Freedom of Information Act (FOIA).

## 20e. Why is it necessary to close and/or partially closed committee meetings?

Not Applicable

## 21. Remarks

As part of the Open Government Partnership, the United States issued its second Open Government National Action Plan (NAP) on December 5, 2013, that sets forth several specific initiatives the Administration would undertake in the coming two years. One flagship initiative includes efforts to modernize the Freedom of Information Act (FOIA), including creating a FOIA Federal Advisory Committee to be “comprised of government and non-governmental members of the FOIA community, to foster dialog between the Administration and the requester community, solicit public comments, and develop consensus recommendations for improving FOIA administration and proactive disclosures.”

## Designated Federal Officer

Kirsten B. Mitchell Compliance Team Lead

Committee Members	Start	End	Occupation	Member Designation
Andoh, Roger	07/31/2020	06/30/2022	Centers for Disease Control and Prevention	Regular Government Employee (RGE) Member
Blutstein, Allan	07/24/2020	06/30/2022	America Rising	Representative Member
Cuillier, David	07/24/2020	06/30/2022	University of Arizona	Representative Member
Deitrick, Allyson	07/24/2020	06/30/2022	U.S. Department of Commerce	Regular Government Employee (RGE) Member
Ellis, Kristin	07/24/2020	06/30/2022	Federal Bureau of Investigation	Regular Government Employee (RGE) Member
Frye, Linda	07/24/2020	06/30/2022	Social Security Administration	Regular Government Employee (RGE) Member
Gart, Jason	07/24/2020	06/30/2022	History Associates Incorporated	Representative Member
Graves, Alexis	07/24/2020	06/30/2022	U.S. Department of Agriculture	Regular Government Employee (RGE) Member
Haddad, Loubna	09/08/2020	06/30/2022	Defense Intelligence Agency	Regular Government Employee (RGE) Member
McClanahan, Kel	07/24/2020	06/30/2022	National Security Counselors	Representative Member
Morisy, Michael	07/24/2020	06/30/2022	MuckRock	Representative Member
Perloff-Giles, Alexandra	07/24/2020	06/30/2022	Gibson Dunn & Crutcher	Representative Member
Samahon, Tuan	07/31/2020	06/30/2022	Villanova University	Representative Member
Schwarz, Matthew	07/31/2020	06/30/2022	Environmental Protection Agency	Regular Government Employee (RGE) Member
Semo, Alina	07/31/2020	06/30/2022	Director, Office of Government Information Services	Regular Government Employee (RGE) Member
Stocker, James	07/31/2020	06/30/2022	Trinity Washington University	Representative Member
Susman, Thomas	07/31/2020	06/30/2022	American Bar Association	Representative Member
Talebian, Bobak	07/31/2020	06/30/2022	Director, Office of Information Policy	Regular Government Employee (RGE) Member
Wagner, A.Jay	07/31/2020	06/30/2022	Marquette University	Representative Member
Weth, Patricia	07/31/2020	06/30/2022	National Labor Relations Board	Regular Government Employee (RGE) Member

**Number of Committee Members Listed: 20**

**Narrative Description**

As part of the Open Government Partnership, the United States issued its second Open Government National Action Plan (NAP) on December 5, 2013, that set forth several specific initiatives the Administration would undertake. One flagship initiative included various efforts to modernize the Freedom of Information Act (FOIA). This initiative included creating a FOIA Federal Advisory Committee, which is “comprised of government and non-governmental members of the FOIA community. This committee fosters dialog between the Administration and the requester community, solicits public comments, and develops consensus recommendations for improving FOIA administration and proactive disclosures.”The Committee was established in accordance with the NAP and the directive in the Freedom of Information Act, 5 U.S.C. § 552(h)(1)(C), which states that the National Archives and Records Administration's Office of Government Information Services (OGIS) “recommend policy changes ... to improve” the Freedom of Information Act (FOIA) administration.This advisory committee serves as a deliberative body to advise on improvements to FOIA administration. The Committee studies the current FOIA landscape across the Executive Branch and may recommend legislative action, policy changes or executive action, among other matters.

**What are the most significant program outcomes associated with this committee?**

Checked if Applies

- Improvements to health or safety
- Trust in government
- Major policy changes
- Advance in scientific research
- Effective grant making
- Improved service delivery
- Increased customer satisfaction
- Implementation of laws or regulatory requirements
- Other

**Outcome Comments**

Not Applicable

**What are the cost savings associated with this committee?**

Checked if Applies

- None

- Unable to Determine
- Under \$100,000
- \$100,000 - \$500,000
- \$500,001 - \$1,000,000
- \$1,000,001 - \$5,000,000
- \$5,000,001 - \$10,000,000
- Over \$10,000,000
- Cost Savings Other

**Cost Savings Comments**

Unable to Determine

**What is the approximate Number of recommendations produced by this committee for the life of the committee?**

30

**Number of Recommendations Comments**

During its first term (2014-16), the committee recommended that the Archivist of the United States 2016-01 recommend that the Office of Management and Budget (OMB) revise and update its fee guidance to reflect technological changes in the public's ability to disseminate information. During its second term (2016-18), the committee recommended that the Archivist of the United States: 2018-1)-propose that the Chief FOIA Officer Council seek to establish a technology subcommittee in partnership with the CIO Council 2018-2) request that the Department of Justice Office of Information Policy (OIP) collect detailed information about agency search practices and technologies in Chief FOIA Officer Reports 2018-3)-suggest a modification to the Federal Acquisition Regulation that requires all agencies to consider FOIA implications when acquiring records-related information technology 2018-4)-launch an interagency effort to develop standard requirements for FOIA processing tools that ensure both the tools and the output are accessible to people with disabilities 2018-5) request that the Office of Government Information Services (OGIS) conduct an assessment of agency practices with regard to FOIA reading rooms 2018-6) encourage OGIS in its Annual Report to highlight issues with meeting agency requirements to proactively release records under FOIA while also making records accessible to people with disabilities 2018-7)-direct OGIS to examine the use of appropriate FOIA performance standards Although not a recommendation per se, the committee also directed OGIS to highlight identified best practices. During its third term (2018-2020) the committee recommended that 2020-01) The Office of Government Information Services (OGIS) will assess information about the FOIA filing process available on agency websites, with the goal of informing further the Department of Justice,

Office of Information Policy (OIP) guidance on how agencies may improve online descriptions of the process. 2020-02) The Department of Justice, Office of Information Policy (OIP), will issue guidance related to the inclusion of records management-related materials and FOIA handbooks on agency websites. 2020-03) Agencies will work toward the goal of collecting, describing, and giving access to FOIA-released records in one or more central repositories, and on agency websites. 2020-04) The National Archives and Records Administration (NARA) and the Department of Justice, Office of Information Policy (OIP), will offer records management training to FOIA officers and FOIA Public Liaisons in federal agencies, and include a FOIA module in records management training courses open to all federal employees. 2020-05) The Department of Justice, Office of Information Policy (OIP), will issue guidance requesting agencies to provide annual mandatory FOIA training to all new and current employees and contractors. The Office of Government Information Services (OGIS) and OIP will review agencies' current FOIA training requirements and content. 2020-06) The Office of Government Information Services (OGIS) and the Department of Justice, Office of Information Policy (OIP), will assist agencies in developing FOIA and records management briefings for incoming senior leaders following changes in administration or leadership. 2020-07) The Office of Government Information Services (OGIS) and the Department of Justice, Office of Information Policy (OIP), will review the FOIA performance measures used in Agency Performance Plans and Reports, encourage agencies to include FOIA in their performance plans and submit the results of their review and any recommendations to Congress and the President. 2020-08) The Department of Justice, Office of Information Policy (OIP), will collect information as part of Chief FOIA Officer Reports regarding standard operating procedures (SOPs) for FOIA processing. 2020-09) The National Archives and Records Administration (NARA) will incorporate and further develop the idea of public access to federal records, including through FOIA, as part of its Federal Electronic Records Modernization Initiative (FERMI). 2020-10) The National Archives and Records Administration (NARA) and the Department of Justice, Office of Information Policy (OIP), will establish liaisons with the Chief Data Officers (CDO) Council to ensure that Council officials understand the importance of federal recordkeeping and FOIA requirements. 2020-11) The Department of Justice, Office of Information Policy (OIP), will provide guidance to agencies on the use of e-discovery tools to assist agencies in their searches of electronic records in response to FOIA requests. 2020-12) Agencies will publicly release FOIA documents on their FOIA websites and portals in open, legible, machine-readable and machine-actionable formats, to the extent feasible. 2020-13) Agencies will review their FOIA-related technological and staffing capabilities within two years to identify the resources needed to respond to current and anticipated future FOIA demands. 2020-14) The Office of Government Information Services (OGIS) and the Department of Justice, Office of Information Policy (OIP), will help agencies explore and

consider alternative, more efficient ways for requesters to access records about themselves. 2020-15) Agencies will make commonly requested documents available outside of the FOIA process, including in publicly accessible online databases. 2020-16) The Chief FOIA Officers (CFO) Council will create a committee to research and propose cross-agency grant programs and other FOIA funding sources, create career paths for FOIA professionals, and promote models to align agency resources with agency transparency. 2020-17) The Chief FOIA Officers (CFO) Council will work with agency leadership to issue an annual memorandum on the importance of FOIA. 2020-18) The Archivist of the United States will ask the Council of the Inspectors General on Integrity and Efficiency (CIGIE) to consider a cross-cutting project examining how successful agency FOIA programs are in providing access to agency records in electronic and digital form. 2020-19) The Office of Government Information Services (OGIS) will ask Congress to engage in regular and robust oversight of FOIA, hold more hearings, establish regular and coordinated communication with agencies around FOIA issues, and strengthen OGIS with clearer authority and expanded resources. 2020-20) The Office of Government Information Services (OGIS) will ask Congress to address funding for agency FOIA programs and ensure that agencies have sufficient resources to comply with the FOIA. 2020-21) The Archivist of the United States will actively guide ongoing and future federal data strategies to include FOIA and federal recordkeeping policies. 2020-22) The Archivist of the United States will promote research into the use of artificial intelligence and machine learning to improve FOIA searches and efficiently process FOIA requests.

**What is the approximate Percentage of these recommendations that have been or will be Fully implemented by the agency?**

17%

#### **% of Recommendations Fully Implemented Comments**

The Archivist of the United States submitted the 2016 recommendation regarding updating fee guidance to OMB. (2016-01) Regarding the 2018 recommendations: 2018-01) the Chief FOIA Officer Council established a technology subcommittee in partnership with the CIO Council which met throughout FY 2019 and FY 2020. 2018-02) the Department of Justice Office of Information Policy (OIP) collected information about agency search practices and technologies in Chief FOIA Officer Reports & OGIS published a report on that information in July 2019. 2018-03) OGIS drafted a business case in FY 2019 that would modify the FAR to require access to federal agency records as a consideration in the procurement process. NARA submitted the business case to the Office of Management and Budget (OMB) in early FY 2020 for consideration by the FAR Council. We consider this recommendation complete and will continue to urge this amendment to the FAR. 2018-06) OGIS recommended to Congress in March 2019 that it

consider legislation to help agencies meet the requirements of FOIA while also making records accessible to people with disabilities. Although not a stand-alone recommendation per se, OGIS has, in its Annual Report to Congress and the President, and in its blog, highlighted best practices identified by the committee.

**What is the approximate Percentage of these recommendations that have been or will be Partially implemented by the agency?**

53%

**% of Recommendations Partially Implemented Comments**

Regarding the 2018 recommendations: 2018-04) Aspects of this recommendation have been addressed through the submission of the Federal Acquisition Regulation (FAR) business case discussed in Recommendation 2018-03. The Technology Committee of the Chief FOIA Officers Council (CFO) Council spent FY 2019 and 2020 studying the FOIA technology landscape and will continue in FY 2021 in collaboration with the Technology Subcommittee of the 2020-2022 term of the FOIA Advisory Committee. The CFO Council Technology Committee also established a working group to examine the intersection of 508 compliance and FOIA. 2018-05) OGIS included two questions about this issue in the 2018 Records Management Self-Assessment (RMSA) that was administered by the Office of the Chief Records Officer (CRO) for the U.S. Government in the spring 2019. The responses showed that, generally, agencies are complying with FOIA's mandate and have procedures for preparing documents for posting on FOIA reading rooms; and it is largely FOIA staff who are preparing documents for posting. The responses form the foundation for a separate OGIS issue assessment that we expect to publish in FY 2021 in accordance with the FOIA Advisory Committee's recommendation. 2018-07) The 2018 Records Management Self-Assessment Survey (RMSA) included a question about FOIA performance measures. As OGIS explained in Assessing Freedom of Information Act Compliance through the 2018 National Archives and Records Administration's Records Management Self-Assessment Report, the responses show that nearly half of the agencies do not have FOIA performance measures for non-FOIA professionals. The responses to this question formed the foundation for OGIS Issue Assessment: Freedom of Information Act (FOIA) Performance Measures for Non-FOIA Professionals published in September 2020. OGIS expects to submit assessment results and any recommendations to Congress and the President as part of our 2021 Annual Report on FY 2020. Regarding the 2020 recommendations: 2020-01) The 2019 Records Management Self-Assessment Survey (RMSA) included a question about the types of information that agencies make available on their FOIA websites to help requesters better understand the records that agencies maintain. The results of the 2019 RMSA, conducted in early 2020, will be the subject of a forthcoming OGIS assessment. 2020-02) The 2019

Records Management Self-Assessment Survey (RMSA) included a question about the types of information that agencies make available on their FOIA website to help requesters better understand the records that the agencies maintain. The 2019 RMSA, conducted in early 2020, will be the subject of a forthcoming OGIS assessment and will inform OIP guidance. 2020-05) As a first step, OIP is asking agencies in their 2021 Chief FOIA Officer Reports to describe efforts to ensure proper FOIA training is made available and used by agency personnel, and to inform non-FOIA professionals of their obligations under FOIA. 2020-08) OIP is asking agencies in their 2021 Chief FOIA Officer Reports several questions regarding SOPs for the FOIA process. As the Office of Government Information Services (OGIS) reported in Assessing Freedom of Information Act (FOIA) Compliance through the 2016 National Archives and Records Administration's Records Management Self-Assessment 77% of respondents to the survey, conducted in 2017, reported having SOPs for FOIA processing, while 12% reported having SOPs for some parts of the process. 2020-09) NARA updated its Universal Electronic Records Management (ERM) Requirements in April 2020 to include FOIA. The ERM now requires agencies to manage records in ways that support proactive release under FOIA. The ERM further states that records management should support sufficiency of FOIA search. 2020-10) The directors of the Office of Government Information Services (OGIS) and OIP are serving as liaisons to the CDO Council. 2020-12) As a first step, the Department of Justice, Office of Information Policy (OIP), is asking agencies in their 2021 Chief FOIA Officer Reports to provide examples of steps taken to post information in open, machine-readable and machine-actionable formats, to the extent feasible. 2020-14) As a first step, OIP, is asking agencies in their 2021 Chief FOIA Officer Reports to describe any common categories of first-party requests and whether the agencies have explored establishing non-FOIA access to those records. 2020-16) The CFO Council's Co-Chairpersons solicited volunteers for the Council's Committee on Cross-Agency Collaboration and Innovation at the Council's October 14, 2020, meeting. 2020-19) The Legislation Subcommittee of the 2020-2022 term of the FOIA Advisory Committee expects to continue studying these ideas. 2020-20) The Legislation Subcommittee of the 2020-2022 term of the FOIA Advisory Committee expects to continue studying these ideas. 2020-21) The Archivist of the United States continues to guide ongoing and future federal data strategies to include FOIA and federal recordkeeping policies. 2020-22) The Chief Records Officer for the U.S. Government issued a white paper, Cognitive Technologies: Records Management Implications for Internet of Things, Robotic Process Automation, Machine Learning, and Artificial Intelligence, in October 2020. Although the paper does not reference FOIA, there is a crucial relationship between records management and FOIA. For an up-to-date look at where implementation stands, see <https://www.archives.gov/ogis/foia-advisory-committee/dashboard>.

**Does the agency provide the committee with feedback regarding actions taken to implement recommendations or advice offered?**

Yes  No  Not Applicable

**Agency Feedback Comments**

The Archivist of the United States reviewed the 22 recommendations made by the 2018-2020 term and tasked OGIS with overseeing implementation of a plan to implement the Advisory Committee's recommendations.

**What other actions has the agency taken as a result of the committee's advice or recommendation?**

Checked if Applies

- Reorganized Priorities
- Reallocated resources
- Issued new regulation
- Proposed legislation
- Approved grants or other payments
- Other

**Action Comments**

Not Applicable

**Is the Committee engaged in the review of applications for grants?**

No

**Grant Review Comments**

Not Applicable

**How is access provided to the information for the Committee's documentation?**

Checked if Applies

- Contact DFO
- Online Agency Web Site
- Online Committee Web Site
- Online GSA FACA Web Site
- Publications
- Other

**Access Comments**

Information about the committee is available on the Committee's webpage at

<https://www.archives.gov/ogis/foia-advisory-committee> and on the Office of Government Information Services blog at <http://foia.blogs.archives.gov/>.