

OGIS Policy Recommendations for Improving Freedom of Information Act procedures and the Administration of the Office of Government Information Services

April 24, 2012

The National Archives and Records Administration's (NARA) Office of Government Information Services (OGIS) has identified a number of areas where the Freedom of Information Act (FOIA) process could be improved, as well as areas where OGIS's role can be made more effective. The policy recommendations, prepared in accordance with Title 5 of United States Code, Section 552 (h)(2)(C), have benefitted from ongoing consultation with agencies as well as feedback from the public.¹ OGIS is currently working to implement these recommendations, and looks forward to engaging with Congress in these areas.

Issue 1: Misdirected Inquiries from the Public

Challenge:

OGIS regularly receives calls from members of the public looking for assistance with requests for their own records, although OGIS's statutory authority does not include such first-party requests under the Privacy Act of 1974. These requesters are often uncertain about the application of FOIA and the Privacy Act when agencies process requests for access to records. OGIS initially saw its role as limited to assisting only with straight FOIA requests. Over time, OGIS realized that many first-party, or Privacy Act, requests overlap with the FOIA. OGIS works to provide ombuds services for such requests, including providing information about the process and the status of requests. OGIS also acts to ensure that the administrative process is fair. OGIS does not have a statutory role in reviewing policies, procedures and compliance with the Privacy Act as it does with FOIA. Although not a large part of the OGIS caseload, providing ombuds services to Privacy Act requesters does compete with the Office's implementing fully its mission of assisting FOIA requesters. In addition, OGIS has observed that the level of service and assistance to first-party requesters can be improved.

Recommendation and Action Step:

The Chief Information Officers Council has taken steps to make it easier for individuals to find the Department and Agency Privacy homepages, <http://www.cio.gov/modules/privacy/>. Because of the intersection of FOIA and the Privacy Act, OGIS, working with the Privacy Officers Committee of the CIO Council, should help to develop and promote methods for departments and agencies, which receive large volumes of first-party requests, to improve how requesters navigate agency processes to obtain needed information.

Issue 2: Facilitating Agencies' Sharing of Information with OGIS

Challenge:

When a FOIA requester initiates contact with OGIS, the Office obtains the requester's signed consent under the Privacy Act of 1974 before assisting him or her. The consent authorizes OGIS to inquire on a customer's behalf regarding the request or administrative appeal at issue; the consent also authorizes

¹ OGIS had previously provided a draft report, prepared in accordance with Title 5 of United States Code, Section 552 (h)(2)(C), to the Office of Management and Budget. The coverage of that draft report was limited to policy issues 1 and 2 described herein.

departments and agencies to release to OGIS information and records related to the request or appeal. However, requiring consent can be an obstacle when an agency, rather than an individual requester, is seeking OGIS assistance. The situation places agencies in the position of obtaining requester consent for the sole purpose of seeking OGIS' assistance in resolving a dispute. (A secondary challenge is that asking for and obtaining the consent adds to the time it takes OGIS to handle a request for assistance.)

Recommendation and Action Step:

OGIS will work with the Office of Management and Budget, which is statutorily charged with implementing government-wide Privacy Act guidance, on language that agencies could use as a model to publish as a Privacy Act (b)(3) routine use in their FOIA requests/appeals Systems of Records Notices. Under consideration is the following language, which will be proposed imminently by the Department of Justice for its FOIA/PA request/appeals files system notice:

“To the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures, and compliance with the Freedom of Information Act, and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.”

Issue 3: Improving Public Access to FOIA Information

Challenge:

About 350 Federal departments, agencies and components comprise the Federal executive branch, and each has its own separate process for accepting and processing FOIA requests; the landscape is complex and some requesters, who have the statutory right under FOIA to seek access to documents, find the bureaucracy difficult to navigate. On the agency side, many FOIA professionals are challenged with processing requests in accordance with the statute, particularly shepherding an abundance of requests through the process and making public frequently requested documents.

Recommendation and Action Step:

OGIS is a partner with the Environmental Protection Agency and the Department of Commerce to collaborate in developing a pilot portal, now called the FOIA Module – a one-stop portal that could be used to accept FOIA requests, store them in a repository for processing by agency staff, and allow responsive documents to be uploaded into the system and posted for the public. The Module is scheduled to be launched for agencies this summer and unveiled to the public in October 2012. OGIS believes that the project has potential to improve the public's access to government information and to save taxpayers' money by sharing agency resources and repurposing existing technology. Based on the results of the launch, OGIS would work with other agencies to consider how the Module might be useful to them in carrying out their statutory responsibilities.

Issue 4: Coordinating FOIA Responses Across Government

Challenge:

It is not uncommon for multiple agencies to receive related, or even identical, FOIA requests. Agency professionals responding to these requests may not be aware of the similar requests, and

may not be taking full advantage of appropriate opportunities to coordinate their efforts in responding.

Recommendation and Action Step:

OGIS developed a strategy to coordinate agency contacts and facilitate communication on multi-agency requests. This approach ensures agencies are aware that the request has been received by fellow agencies; puts the agency points of contact in touch with one another so they can share tips and strategies for fulfilling the request; and also helps to avoid redundancies.

OGIS facilitates discussions via email, telephone and in-person meetings to coordinate communication in which agencies discuss their steps in resolving the requests and raise any concerns or difficulties they have encountered. (OGIS also coordinates with DOJ's Office of Information Policy as appropriate, in view of the offices' complementary roles.) While agencies work autonomously to respond to requests, they can share information with one another to assist in preventing and avoiding disputes and to provide good customer service to requesters. It also allows for discussion of any disparate responses and an opportunity to help requesters understand why agencies may treat similar information in different ways.

OGIS serves as the central point of contact for the agencies in sharing information and also relays information to requesters as appropriate. Both agencies and requesters have found this approach to be very useful and both now initiate requests for OGIS assistance. We believe that this type of coordination reduces the burden on each agency, improves the quality of the response, and provides better service to requesters.

Issue 5: Developing Dispute Resolution Skills in Agency FOIA Professionals

Challenge:

The amended Freedom of Information Act, 5 U.S.C. §§ 552(a)(6)(B)(ii) and (l), now directs FOIA Public Liaisons to help resolve FOIA disputes. However, there has been no comprehensive training effort to help agency FOIA personnel develop dispute resolution skills.

Recommendation and Action Step:

OGIS offers a free dispute resolution skills training program for all FOIA professionals to help them achieve this mandate. We present an inter-agency version of this training program quarterly in collaboration with the Department of Justice's Office of Information Policy (OIP). OGIS also offers agency-specific FOIA dispute resolution skills training; so far we have delivered that training to the FOIA staffs of the Departments of the Interior, State, and Homeland Security. OGIS will encourage departments and agencies to partner with OGIS to expand dispute resolution training for their FOIA professionals. OGIS also intends to develop cross-training for agency Dispute Resolution professionals so that they can assist their FOIA colleagues in preventing and resolving FOIA disputes.