

**OGIS RESPONSE TO QUESTIONS FOR THE RECORD
FROM SENATOR PATRICK LEAHY
TO
MIRIAM NISBET**

**FOLLOWING THE SENATE JUDICIARY COMMITTEE HEARING:
“THE FREEDOM OF INFORMATION ACT: ENSURING TRANSPARENCY AND
ACCOUNTABILITY IN THE DIGITAL AGE.”**

HELD ON MARCH 15, 2011

1. Does the OGIS have any recommendations to the Committee regarding how to improve FOIA compliance and promote open government?

As stated in Director Nisbet’s testimony on March 15, 2011, since September 2009, OGIS had closed 541 cases, 124 of them true disputes between FOIA requesters and agencies (for example, a dispute over application of an exemption or a fee assessment rather than a simple request for information). As of March 15, 2011--nearly half-way through the fiscal year-- OGIS had opened an additional 206 cases, bringing our total to 597. OGIS closed a large number of these cases by conducting facilitation, which is one form of mediation services in which the mediator, in these cases OGIS staffers, assists each party to communicate and to understand the other’s position, interests, and needs.

Although OGIS is still working to develop a robust strategy for implementing the second prong of its mission -- to review agencies’ FOIA policies, procedures and compliance -- our current approach is to use the data available in the agencies’ annual FOIA reports and Chief FOIA Officer reports. During our first year, we discovered the unique opportunity presented in conducting facilitation to note observed agency policies and procedures in action in the context of an actual request or appeal. By using our observations from our facilitated cases to supplement a thorough analysis of all 94 Chief FOIA Officer Reports of 2010, we were able to develop best practices for agencies and requesters for improving FOIA compliance and for promoting open government. OGIS has recommended that agencies adopt these best practices as internal policies and procedures. OGIS’s Best Practices chart is attached as Appendix A and is available on OGIS’s web site at www.archives.gov/ogis/ .

In addition to our Best Practices, OGIS is working within the Executive Branch review process to provide more formal recommendations to improve FOIA administration.

2. Does OGIS have access to the annual agency FOIA reports and other data that it needs to carry-out its duties under the OPEN Government Act?

The FOIA requires that agencies provide the Attorney General with annual FOIA statistics compiled for the preceding fiscal year. The Attorney General then makes the Annual FOIA Reports of all agencies available electronically at a single site. FOIA also directs agency Chief FOIA Officers to review all aspects of their agencies' FOIA administration and report to the Department of Justice (DoJ) each year on the steps that have been taken to improve FOIA operations and facilitate information disclosure at their agencies. The Department of Justice's Office of Information Policy (OIP) offers specific guidance on the content and timing of such reports. Agencies provide the required data to OIP, which in turn posts the data online. OGIS is able to access the reported data for individual agencies through the department/agency web sites or through the DoJ web site.

3. How can Congress help to ensure that OGIS has the resources needed to carry out its important responsibilities?

The Archivist of the United States continues to demonstrate his commitment to supporting OGIS and its mission. OGIS's authorized staffing consists of six professionals and one staff assistant. As of May 2010, OGIS was fully staffed.

In its first year of operation, OGIS successfully leveraged its resources to implement its mission. For example, OGIS collaborated with agency alternative dispute resolution (ADR) personnel to develop and provide dispute resolution skills training to agency FOIA professionals, as well as to the public through the American Society of Access Professionals. This type of training program is a novel approach in the FOIA arena to equip FOIA professionals with communication techniques and strategies. Our strategy is to encourage prevention and resolution of disputes at the earliest possible point in the FOIA request process, both to improve the administration of FOIA and to save agency and OGIS resources.

OGIS's use of facilitation to resolve disputes between FOIA requesters and agencies is a cost-effective way to implement its mission to provide mediation services to resolve disputes because the OGIS staff conducts the facilitation rather than an outside neutral party, which would incur costs to the government. OGIS has observed that this type of "mediation services" is very successful in resolving disputes and thus far, we have been able to resolve approximately 80-85% of our cases in a reasonably timely manner.

We have not been able to develop fully a robust approach to our mission to review agencies' FOIA policies, procedures and compliance. However, as noted above, in conducting facilitation of our cases we are able to observe agency policies and procedures in action in the context of an actual request or appeal. In addition, we have succeeded in engaging in collaborative review by offering our services to review agency FOIA regulations with agencies that are considering revising FOIA regulations or practices. A few agencies have already worked with OGIS in that capacity and we plan to continue the collaborative review process going forward with as many other agencies as possible. To further this goal, OGIS continues to invite agencies to participate in collaborative reviews of their FOIA processes and to gather ideas from the public and Federal agencies about ways in which OGIS can best accomplish this prong of its mission in a cost-effective way.

In the current budgetary environment OGIS is committed to fulfilling its statutory mission with its existing resources.