

**Written Questions for the Record of Chairman Leahy
for Miriam Nisbet
Director, Office of Government Information Services
National Archives and Records Administration
March 18, 2014**

1. Several Federal agencies have been participating in an online FOIA portal that allows the public to submit, track and review FOIA requests online. Congress is considering legislation to expand the FOIA portal government-wide. Do you support this proposal?

RESPONSE: As a founding partner in *FOIAonline*, OGIS continues to support the portal's improvement of services and expansion of partners. OGIS also recognizes that while *FOIAonline* offers agencies customization, it may not work for *all* agencies. OGIS notes that one of the goals of the Administration's Second Open Government National Action Plan is to "Improve the Customer Experience through a Consolidated Online FOIA Service." The existing and expanded *FOIAonline* system—which was the subject of an OGIS Recommendation in 2012—will certainly inform this process. We look forward to assisting in Administration efforts to implement a consolidated online FOIA service that will give requesters a single site across government where they can file their requests and includes additional tools to improve the customer experience.

2. Congress is also considering a proposal to require that all records released under FOIA be posted online. Do you support this proposal?

RESPONSE: Under the Freedom of Information Act (FOIA), generally a release to one is a release to all. As such, OGIS supports posting online as many FOIA-released records as practicable, with the understanding that there are costs and technological improvements associated with posting records, including records management, the ability to search for and retrieve records, first-party records requests, and Section 508 compliance, which requires that agencies' web content be equally accessible to all, including those with disabilities.

3. During the March 11, 2014 hearing, you testified that the administration's goal is to implement a shared FOIA portal government-wide. What specific steps is the Office of Government Information Services taking to encourage Federal agencies to participate in the FOIA portal?

RESPONSE: *FOIAonline* was established as a shared service, with the developers taking direction from member agencies, one of which is the National Archives and Records

Administration (NARA), OGIS's parent agency. In its role as FOIA ombudsman, OGIS participates in this consensus building effort; OGIS is a member (through its Director) of the *FOIAonline* governing body. OGIS firmly believes that the best way to encourage Federal agencies to participate in *FOIAonline* is to offer a platform that meets agencies' needs.

4. A March 2014 study by the Center for Effective Government found that a majority of the Federal agencies that it graded on FOIA performance did not provide important online services, such as the tracking of FOIA requests via their websites.
 - a. Why are Federal agencies lagging behind in utilizing the Internet and other technologies to facilitate the FOIA process?

RESPONSE: OGIS has observed some costs associated with technology improvements in FOIA processing can cause some agencies to lag behind in technology used in their FOIA processes. Also, some agencies' current contractual obligations require costs for any improvements. This is why OGIS recommends that agencies engage their FOIA and/or records management professionals when they consider purchasing new information technology, whether for the FOIA process or for managing agency records in general. As indicated in my response to Question 2 above, OGIS has observed that even when technology allows for posting, there are issues surrounding online posting of FOIA-released records that agencies must consider, including records management, the ability to search and retrieve records, first-party records requests, and Section 508 compliance, which requires that agencies' web content be equally accessible to all, including those with disabilities.

- b. Do you have any recommendations on how Congress can help federal agencies facilitate the FOIA process in the digital age?

RESPONSE: At this time, OGIS has no specific legislative recommendations. As you know, this year OGIS had two recommendations for improving the FOIA process, including embedding FOIA into agencies' FOIA information technology (IT) procurement process. We suggest, for example, that when procuring new technology, upgrading existing technology, or even creating a new large agency database, agencies consult with their records managers and FOIA professionals to best determine how the records will be managed, how the agency might efficiently and effectively search for records in response to FOIA requests for the information contained in those records, and, ideally, how the agency might proactively disclose the information or data.

5. I am concerned that OGIS does not always receive the level of cooperation needed from Federal agencies in order to conduct its FOIA compliance work.
 - a. Are there any areas where OGIS needs greater cooperation from Federal agencies?

RESPONSE: FOIA gives both requesters and agencies the right to request OGIS’s mediation services, 5 U.S.C. § 552(h)(3). Agency participation in the OGIS mediation process is not mandatory; however, the vast majority of agencies involved in OGIS cases—including all 15 Cabinet-level departments and dozens of smaller agencies—work well with OGIS.

One area where OGIS is focusing its efforts is helping Federal agencies and requesters alike change the culture by embracing Alternative Dispute Resolution (ADR) as a way to resolve disputes. The Openness Promotes Effectiveness in our National (OPEN) Government Act of 2007, which introduced ADR to the FOIA process, directs that FOIA Public Liaisons assist in resolving disputes between FOIA requesters and Federal agencies, 5 U.S.C. §§ 552(a)(6)(B)(ii) and 552(l). One of OGIS’s 2013 Recommendations was to marry FOIA and the ADR across agencies, and in 2014, OGIS recommended that the Executive Branch issue guidance to agencies that focuses on ways agencies can provide exemplary customer service to FOIA requesters, with particular attention to the importance of appropriate dispute resolution through the FOIA Public Liaisons and through working with OGIS.

OGIS believes that embedding ADR into the FOIA process at the agency level offers the first and best place to resolve and prevent disputes that otherwise might end up at OGIS—or in litigation. For example, all agencies should provide requesters with the name and contact information for their FOIA Public Liaisons so that requesters can contact the liaisons for assistance in resolving disputes as mandated in FOIA. Too often, requesters come to OGIS because they are not aware of the FOIA Public Liaison role or they do not have the Public Liaison’s name or contact information.

OGIS has observed that when both Federal agencies and requesters embrace Alternative Dispute Resolution, the FOIA culture is changed such that there are fewer disputes.

b. How can Congress help ensure that OGIS gets the cooperation that it needs?

RESPONSE: Congress’s continued support of OGIS’s work will, in itself, encourage cooperation by agencies and requesters alike.

**“Open Government and Freedom of Information:
Reinvigorating the Freedom of Information Act for the Digital Age”
Questions for the Record submitted by,
Ranking Member Charles E. Grassley**

Questions for Director Nisbet

1. Given the continued rise in FOIA litigation, one neglected resource appears to be the mediation process OGIS provides. I understand that OGIS and requesters must rely on the willingness of an agency involved in a dispute to participate in mediation. What challenges does OGIS face with other agencies in this regard? Additionally, what do you think would be helpful in encouraging greater agency cooperation with OGIS in greater mediation participation?

Response: The Freedom of Information Act (FOIA) gives both requesters and agencies the right to request OGIS’s mediation services, 5 U.S.C. § 552(h)(3). Agency participation in the OGIS mediation process is not mandatory; however, the vast majority of agencies involved in OGIS cases—including all 15 Cabinet-level departments and dozens of smaller agencies—work well with OGIS.

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