

**“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.

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 (ADR), the FOIA culture is changed such that there are fewer disputes.