

# Office of Government Information Services

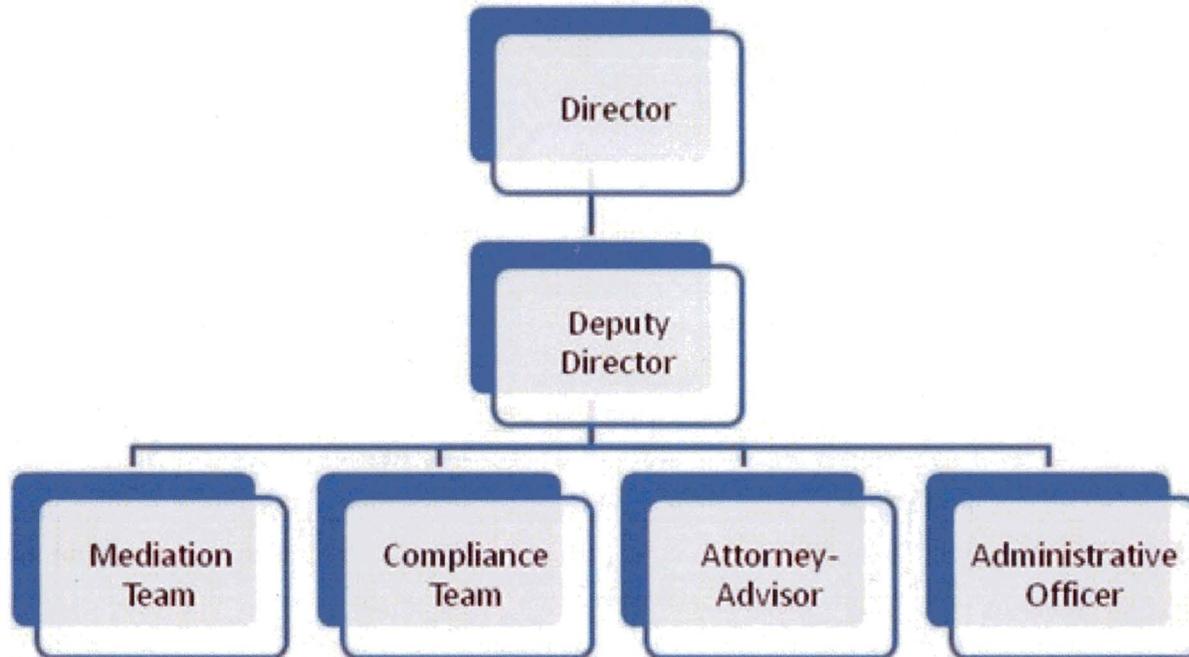


NATIONAL  
ARCHIVES



## The Federal FOIA Ombudsman

# OGIS Organization



# Statutory Role

## 5 U.S.C §§ 552 (h)(2)(A) & 552 (h)(2)(B)

(h)(1) There is established the Office of Government Information Services within the National Archives and Records Administration.

(2) The Office of Government Information Services shall—

(A) review policies and procedures of administrative agencies under this section;

(B) review compliance with this section by administrative agencies; and

(C) recommend policy changes to Congress and the President to improve the administration of this section.

# Statutory Role

- 5 U.S.C §§ 552 (h)(3)
- Mediate disputes. Offer mediation services to resolve disputes between persons making FOIA requests and agencies (non-exclusive alternative to litigation).
- At discretion of the Office, may issue advisory opinions if mediation has not resolved the issue.

# Mediation mission

- All mediation services are in accordance with the Administrative Dispute Resolution Act of 1996, 5 USC §§ 571-84, including its confidentiality provision.
- OGIS staff facilitates communication among and between the parties to resolve a dispute;
- Provide ombuds services, which includes providing information and handling general complaints and observations.
- Both FOIA requesters and agencies may contact OGIS to help resolve a dispute at any point in the FOIA process. OGIS does not “take sides” in disputes or advocate on behalf of a requester or agency; the office promotes a fair FOIA process and works with parties to reach a mutually agreeable resolution.

# OGIS Mediation process

- When a customer contacts OGIS to resolve a dispute, the process is generally as follows:
  - 1) Opening a case and sending acknowledgment letter with case tracking number
  - 2) Fact finding process (contact the requester and agency)
  - 3) Facilitation of the dispute accepted for mediation
  - 4) Final response issued for closing the case

# OGIS Mediation Program

OGIS has helped customers in all 50 states



and 22 foreign countries



# Agency Compliance Assessments

- Elements of an effective FOIA Program
  - Good Resource Management Practices
  - Use Appropriate Technology
  - Communicate Effectively

# When reviewing FOIA Programs

- **Assessing agency FOIA programs by reviewing:**
  - FOIA request files;
  - FOIA regulations;
  - Internal guidance for processing requests;
  - agency visits; and
  - other supporting documentation.
- **Providing agencies with FOIA compliance reports**
- **Assisting agencies in solving their biggest FOIA challenges**
- **As with its mediation services, OGIS reviews agency policies, procedures and compliance with a focus on impartiality and fairness, and as an advocate for the FOIA process**

# OGIS Oversight Activities

## Agency Assessments (4 months per assessment)

### 1. Initiate/Planning

- Meet & survey
- Collect information

### 2. Internal Review

- Regulations, website, litigation trends
- Analyze data reported to DOJ

### 3. External Review

- On-site visit & interviews
- Case file review

### 4. Analysis/Writing

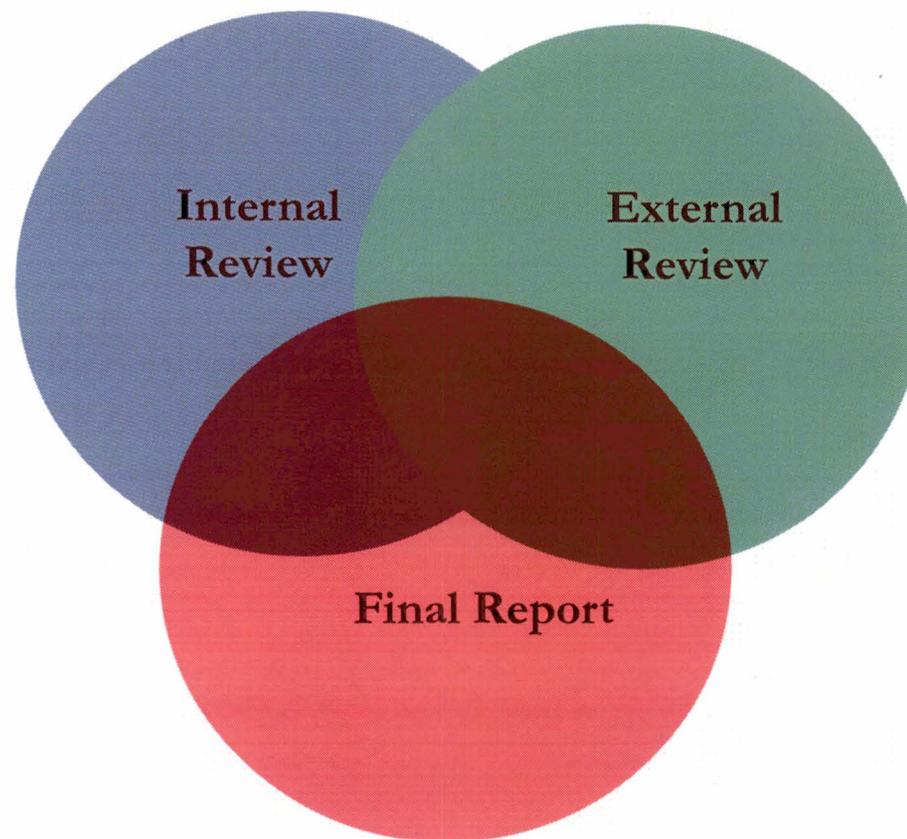
### 5. Internal Report Review

### 6. Reporting

- Draft to agency head & FOIA leaders
- Publish & communicate

### 7. Post-Assessment Follow-up

- 120 days after publication



# Recommendations

**No one-size-fits-all approach to administering  
FOIA**

**Nearly 60 recommendations in 5 compliance  
reports center on**

- **Management**
- **Technology**
- **Communications**

# Findings

## Executive Summary

### *What OGIS Found*

In recent years the Federal Emergency Management Agency (FEMA) has made several investments that will help the agency streamline the Freedom of Information Act (FOIA) process and improve timeliness. These investments include moving onto a unified FOIA processing system and purchasing a license to improve the agency's ability to process requests for email. FEMA has also taken steps to improve its responsiveness to requesters.

Despite these advances, in Fiscal Year (FY) 2014 FEMA reported having several of the oldest pending requests at DHS, including the third oldest request across the Department of Homeland Security (DHS)—while receiving less than one-half of one percent of requests sent to DHS. During the same reporting period, FEMA also reported having the third highest average processing time for complex requests among DHS components (213.82 days).

While FEMA has put in place a system to identify and track requests, it often takes FEMA a year or more to respond to requests. This is reflected in all 16 FOIA lawsuits filed against FEMA in FY 2014, with litigation expenses. FEMA is also not using multi-track processing to process requests.

OGIS's three primary findings are:

- FEMA's FOIA Office needs to improve management and oversight controls;
- Additional steps are needed to fully benefit from investments in technology to improve tracking, processing, and proactive disclosure; and
- Further steps are needed to improve communication.

### *What OGIS Recommends*

Among other things, OGIS recommends that FEMA improve the management and tracking of records processed as a management and oversight control. FEMA should process so that relatively simple requests can move through the process in a more timely fashion, and should proactively communicate with requesters to let them know where they are in the queue and provide reasonable estimated dates of completion.

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- Additional steps are needed to fully benefit from investments in technology to improve tracking, processing, and proactive disclosure; and
- Further steps are needed to improve communication.

# Recommendations: Management

How does the FOIA program, given the resources it has, manage those resources to fulfill the statutory requirements of FOIA?

## Examples:

### Short-term & easily implemented:

- Create standard operating procedures for processing FOIA requests & appeals (NARA's Office of General Counsel & United States Coast Guard)

### Ambitious & long-term:

- Create a plan to centralize FOIA processing (Coast Guard)
- Improve records management practices to help ensure an efficient FOIA process (Federal Emergency Management Agency)

# Recommendations: Technology

Agencies are investing in technology to help the FOIA process, but agency FOIA personnel cannot or do not always take full advantage of the technology.

## Short-term & easily implemented:

- Overhaul FOIA web pages (FEMA)
  - Review reference material for accuracy
  - Fix broken links
  - Create procedures for identifying records to post online

## Ambitious & long-term:

- Consider convening a multi-disciplinary task force within the agency to address disparate technology used by the various FOIA programs (NARA)
- Fully adopt system for tracking and processing FOIA requests (Coast Guard)

# Recommendations: Communications

Relatively low-cost changes = potentially big savings

- Provide requesters with estimated dates of completion upon request
- Communicate regularly with FOIA requesters
- Create or revise template letters
- Create standard language that explains, in plain language, processing queues, fees policies, interim responses, exemptions, & other FOIA-related processes

# Checklist

## Checklist of OGIS Recommendations for FEMA's FOIA Program

### **Management**

- Track volume of records processed and use volume as a management and oversight control tool
- Create a triage process that queues complex and simple requests based on the number of responsive pages or the topic of the request
- Consider reinstating a memorandum of understanding with the United States Coast Guard Administrative Law Judge program to process FOIA appeals
- Discuss with FEMA leadership and DHS Privacy Office staffing challenges during disaster responses and create a contingency plan for meeting those challenges
- Expand training opportunities to include more DOJ workshops and conferences, seminars, and trainings by other agencies, professional organizations, educational institutions, and non-profit organizations; a particular emphasis should be on the Attorney General Guidelines for FOIA, specifically the harm analysis for Exemption 5
- Improve records management practices in regard to storage of FOIA documents and ensure the agency has a complete administrative record for each FOIA case

### **Technology and Proactive Disclosure**

- Use technology to track volume of records processed
- Overhaul the agency's FOIA website to help reduce the office's administrative burden and increase requester knowledge about FOIA
- Create a policy or procedure to regularly identify records to be posted to the FEMA FOIA website
- Consider streamlining contractor notice procedures to make FOIA processing of contracts more efficient
- Engage FEMA leadership to consider proactively releasing contracts and/or finding ways to identify possibly exempt information in contracts before a request comes in
- Discuss with DHS Privacy Office how records can be processed and released in their native formats using the existing case management software

# Benefits to Agency

*“How are we  
doing?”*

- Agency FOIA program evaluated in a holistic way for compliance with statute
- Analysis of data reported annually to DOJ
- Areas for improvement identified & recommendations provided
- FOIA best practices identified & promoted

# OGIS Review FY 2015

- ✓ **National Archives and Records Administration**
  - Office of General Counsel
  - Special Access & FOIA
  
- ✓ **Department of Homeland Security**
  - Federal Emergency Management Agency
  - United States Coast Guard
  - Transportation Security Administration
  - Customs and Border Protection

## Oversight Activities continued

**We also review FOIA compliance regarding  
a single topic (“still interested”)**

**or**

**a particular part of the process (intake or appeals)**

# OGIS Compliance Team

## **Inspectors General/GAO $\neq$ OGIS**

**IG = fraud, waste, abuse & mismanagement**  
**GAO = how government spends taxpayer \$\$\$**

**OGIS = Subject Matter Experts (SMEs)**  
**from both inside and outside the government**  
**who understand how FOIA works**

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# Want to learn more about OGIS

Website:

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