

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: FOIA Public Meeting

Docket Number: (n/a)

Location: Rockville, Maryland

Date: Wednesday, March 23, 2016

Work Order No.: NRC-2255

Pages 1-90

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3 + + + + +

4 FOIA PUBLIC MEETING

5 + + + + +

6 WEDNESDAY,

7 MARCH 23, 2016

8 + + + + +

9 ROCKVILLE, MARYLAND

10 + + + + +

11
12 The Public Meeting was held in the
13 Auditorium at the Nuclear Regulatory Commission, Two
14 White Flint North, 11545 Rockville Pike, at 1:00 p.m.,
15 William Burton, Facilitator, presiding.
16
17
18
19
20
21
22
23
24
25

1 NRC:
2 WILLIAM "BUTCH" BURTON, DLR, Facilitator
3 ROGER ANDOH, OCIO
4 NINA ARGENT, OCIO
5 ANDY BATES, SECY
6 STEPHANIE BLANEY, OCIO
7 SCOTT BRITT, OCIO
8 FREDERICK BROWN, Acting Chief Information
9 Officer
10 CORNELIA BURKHALTER, OCIO
11 JIM COYLE, OCFO
12 KAREN DANOFF, OCIO
13 ELIZABETH DEAHL, OCIO
14 CYNTHIA DORSEY, OCIO
15 TINA ENNIS, OCIO
16 DANIEL FRUMKIN, NRR
17 RON GAGNON, OCIO
18 LATISCHA HANSON, Region 4 (via telephone)
19 PATRICIA HIRSCH, OCIO
20 MARGIE JANNEY, OCIO
21 RICHARD JERVEY, NMSS
22 MICHAEL R. JOHNSON, EDO/DEDR
23 JODY MARTIN, OCM
24 KIMYATA MORGAN BUTLER, OCIO
25 RICHARD PERKINS, RES

1 ANNE PERRERA, OCIO
2 JACOB PHILIP, RES
3 BRIAN SALLEY, OCIO
4 BETH SEREPKA, OIG
5 MARGO STEVENS, OCIO
6 TRACEY STOKES, OCM
7

8 ALSO PRESENT:

9 HOMI AMIRMOKRI, GenIV Nuclear Energy Systems
10 NIKKI GRAMIAN, US NARA/OGIS
11 PAUL GUNTER, Beyond Nuclear
12 DAVID LOCHBAUM, Union of Concerned
13 Scientists
14 SAM MIRANDA, Public
15 JIM RICCIO, Greenpeace
16
17
18
19
20
21
22
23
24
25

T-A-B-L-E O-F C-O-N-T-E-N-T-S

WELCOME:

WILLIAM BURTON, Facilitator 5

INTRODUCTION/OPENING REMARKS:

Fred Brown, Acting NRC CIO 10

ROLE OF OGIS:

Nikki Gramian, Deputy Director of the Office
of Government Information Services 11

INCREASING PROACTIVE DISCLOSURES:

Michael Johnson, NRC Deputy Executive
Director for Reactor & Preparedness 25

FOIA PROGRAM BRIEF:

Kimyata Morgan Butler, NRC Branch Chief,
Office of the CIO, FOIA Privacy
Information Collections Branch 31
Roger Andoh, NRC FOIA Officer 42

QUESTIONS AND COMMENTS: 50

CLOSING REMARKS:

William Burton, Facilitator 88
Kimyata Morgan Butler, NRC Branch Chief 89

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

P R O C E E D I N G S

1:00 p.m.

FACILITATOR BURTON: All right. I think we are ready to get started.

Good afternoon and welcome to this FOIA program briefing. My name is Butch Burton and I normally serve as a project manager in the NRC's Division of License Renewal, but today I'll be serving as your meeting facilitator.

My role as facilitator is to help ensure that the meeting is both informative and productive.

Today's meeting is a Category III meeting. For those of you who are not familiar with the NRC's meeting categories, a Category III meeting is typically held with representatives of non-governmental organizations, private citizens or interested parties or various businesses or industries to fully engage them in discussion.

These meetings provide an opportunity for the NRC and the public to work directly together to ensure that issues and concerns are fully understood and considered by the NRC.

The objective for the public meeting at this -- the objective at this type of meeting is to work with the NRC to provide a range of views,

1 information, concerns and suggestions with regard to
2 regulatory issues.

3 Before we get to the main focus of today's
4 meeting, I would like to take a few minutes to go over
5 some logistics.

6 First, today's meeting is being
7 transcribed by Charles, so to minimize distractions
8 and ensure that everyone can hear the discussions, we
9 ask that you, please, turn off or mute all electronic
10 devices and that you minimize any side conversations
11 during the meeting.

12 Now, very important, to get to the
13 bathrooms, go straight out the door, all the way to
14 the back wall, the ladies room is to the left, mens
15 room is to the right.

16 If we are asked to evacuate the building,
17 please, follow the direction of NRC staff. We will
18 keep everyone together as we muster outside and make
19 sure that we can account for everyone.

20 I also want to briefly tell you how to get
21 around the building. All visitors are allowed
22 unescorted access on the main lobby level. This will
23 allow you to reach the large and small cafeterias in
24 each building, coffee counter, the ATM and the NRC's
25 General Store, all without an escort.

1 To get up to the lobby level, it's best to
2 take the elevator just outside the auditorium and to
3 the right. The elevator will take you directly to the
4 lobby level. However, I will say it is best to take
5 an escort with you because to get back down the
6 elevator, you need a key card, which only an NRC
7 staffer would have. So just so you are aware.

8 Otherwise, let an NRC staff member know if
9 there is anything we can do to make your visit more
10 comfortable.

11 We will have an opportunity for attendees
12 and members of the public to ask questions and to
13 share their thoughts and views. When speaking use the
14 aisle microphones or if you prefer, we can bring you
15 a hand-held mike.

16 When speaking, please, identify yourself
17 and your affiliation and, please, speak directly into
18 the mike.

19 For folks on the phone, we will be using
20 an external operator, which many of you have heard
21 already, Yomi, to assist in fielding incoming
22 questions.

23 Hopefully everyone has signed in and
24 received a meeting evaluation form. Along with the
25 sign-in sheet and the evaluation forms, there are also

1 a few copies of the presentation slides on the desk
2 out front where hopefully you signed in. If you
3 haven't signed in, please, be sure you do so before
4 you leave today.

5 For those on the phone, you can get copies
6 of the agenda and slides from the meeting announcement
7 on the NRC's FOIA website.

8 I wanted to briefly go over the agenda.
9 We will begin with opening remarks followed by a
10 discussion of the role of the Office of Government
11 Information Services or OGIS. I hope I'm pronouncing
12 that right. After that, we will have remarks by our
13 Deputy Executive Director for Reactor and Preparedness
14 Programs. And at that point, if we need to, and I'll
15 put it out to you guys, take a short break, we will do
16 it then.

17 Then if and when we do that, when we come
18 back, we will have a discussion of NRC's FOIA program.
19 Then we will open up the meeting for questions and
20 answers and open discussion followed by closing
21 remarks and adjournment.

22 Any questions on the agenda? Clear as
23 mud. Okay.

24 You are allowed to record the proceedings,
25 but as I said, it is being transcribed, but if anyone

1 is planning on recording, we would like to know if you
2 are. So what I'm going to do is I'm going to let --
3 start with folks here in the room. Is there anyone
4 who is going to be recording the meeting? Okay. I
5 see nothing here. Okay. Yomi, could you, please,
6 open up the phone lines so we can have folks identify
7 themselves if they are planning on recording?

8 OPERATOR: The lines are open, sir.
9 Again, participants you may respond if you are
10 recording.

11 FACILITATOR BURTON: Okay. I think I'm
12 hearing nothing, so okay. Thank you, Yomi. All
13 right. So we will move on from there.

14 We expect to have a pretty fast-paced
15 meeting and we are going to try very hard to stay on
16 time. So we will need to be a little bit flexible
17 with how much time we give for questions and answers
18 and open discussion.

19 Finally, we really want to encourage you
20 to fill out the evaluation forms following today's
21 meeting to help us improve future meetings. We take
22 your comments very seriously and always try to improve
23 as we move along.

24 For folks on the phone, you can get a copy
25 of the feedback forms on the NRC website.

1 Any questions on that? Okay. All right.
2 So I think we are ready to get started.

3 Let me first introduce Fred Brown. He is
4 NRC's Acting Chief Information Officer who will give
5 the welcome and opening remarks and introduce our
6 first presenter. Fred?

7 MR. BROWN: Thank you, Butch. I very much
8 appreciate everybody that could make it here today,
9 both physically and on the phone. This is an
10 important area for the Agency. We take it seriously
11 and given that the area involves interaction and
12 making information available to the public, having
13 face-to-face interaction on that topic seems very
14 appropriate.

15 We are fortunate today to have Ms. Nikki
16 Gramian here with us and she is going to provide a
17 briefing on the role, as Butch said, of the Office of
18 Government Information Services or OGIS. Ms. Gramian
19 is the Deputy Director of that organization which
20 serves as the federal ombudsman for FOIA.

21 Ms. Gramian joined OGIS as its Deputy
22 Director in March of 2013 after serving eight years at
23 the Department of Homeland Security's Office of the
24 Inspector General. In the Office of Inspector
25 General, she managed and supervised the FOIA Team to

1 process many sensitive and highly visible requests.

2 Ms. Gramian oversaw the administrative
3 function of the FOIA process including playing a key
4 role in defending the office in FOIA litigation.

5 Ms. Gramian previously worked for the
6 Department of Justice within the Executive Office of
7 the United States Attorneys and for several private
8 law firms.

9 She earned her master's degree in legal
10 administration, paralegal studies from Marymount
11 University and has studied mediation at the Northern
12 Virginia Mediation Services.

13 I would like to welcome Nikki.

14 (Applause)

15 MS. GRAMIAN: Thank you for the warm
16 welcome. And I definitely want to thank the NRC FOIA
17 Unit, specifically Mr. Roger Andoh for reaching out to
18 me and inviting me to this very important meeting.

19 So to begin with, I would like to talk to
20 you about the OGIS and OGIS organization. I am, as I
21 was introduced, the Deputy Director of the Office of
22 Government Information Services. I'm the second box
23 on that organization chart. And we have a director
24 who came from DHS as well. He came on board. This is
25 the second director of OGIS. He came on board in

1 August of 2015.

2 And our previous director who retired in
3 November of 2014 was Miriam Nesbit. She was the first
4 director of OGIS and, you know, when she started, she
5 had a whole bunch of cases that I will explain as I go
6 through the next slide.

7 So what is OGIS and what do we do and what
8 is our role within the FOIA landscape?

9 OGIS was created in the 2007 amendments to
10 the FOIA and it has two statutory roles. One of it is
11 the compliance reviews and recommendation to Congress
12 and President. The slide provides you where the
13 information about FOIA -- about OGIS is embedded in
14 the statute.

15 You know, going through the A, B, C on
16 this slide, I can give you a little bit of examples
17 to, you know, provide explanation as to what it is we
18 do.

19 So our first statutory role is:

20 (A) The compliance and reviewing policies
21 and procedures of the administrative agencies under
22 the section.

23 What is that? What does that mean? For
24 agencies that use any kind of policies that the
25 Department of Justice provides guidance to FOIA Units

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 across the Government, sometimes we notice that the
2 agencies are not complying with those policies.

3 To give you an example, about two years
4 ago right after Miriam retired, we received a letter
5 from a whole bunch of requesters community asking our
6 assistance or our review of Agency's use of Still
7 Interested Letters. And that's something that we are
8 working on under this particular statute.

9 Another, Section (B) is to review
10 compliance with this section by administrative
11 agencies. And for that, what we do is we provide a
12 holistic review of agencies FOIA programs and then we
13 do an assessment report and then we submit that report
14 to the Agency head and also the Chief FOIA Officer for
15 that particular Agency that we reviewed. In those
16 assessments, we provide recommendations. We also
17 identify best practices.

18 And Item (C) is recommending policy
19 changes to Congress and President in order to approve
20 the administration of FOIA.

21 One thing that has been really helpful for
22 this particular section is the creation of the FOIA
23 Advisory Committee. In the past, the former director
24 had made 11 recommendations to Congress. One of the
25 recommendations -- actually, one of the requests from

1 Congress was for us to review immigration records
2 because of issues that were surrounded around the
3 request for immigration records.

4 Another item that Congress wanted us to
5 review was on FOIA fees. The majority of the
6 requesters community feel that fees are assessed as
7 punitive. It's a punitive use and as a result
8 Congress asked OGIS to do a review.

9 Well, one thing that has really helped us
10 is, as a result of the second National Action Plan,
11 the President asked OGIS, actually asked National
12 Archives to create a FOIA Advisory Committee. And the
13 FOIA Advisory Committee consists of members of the
14 public as well as members of the Government who are
15 FOIA experts.

16 And we have had about -- this coming April
17 will end the first two years of the FOIA Advisory
18 Committee. And in this particular committee, we are
19 reviewing three items that was picked and/or voted by
20 the committee.

21 One is the FOIA fees. The other one is
22 the Proactive Disclosure and the third item is
23 Oversight and Accountability.

24 And what the committee will do is after
25 this two years of deliberation, they will make

1 recommendations to the Archivist and we can also use
2 that -- those recommendations to also recommend to
3 Congress and the President, of course.

4 Next slide, please. So our second
5 statutory role is to provide medication services to
6 agencies and FOIA requesters.

7 You know, while we offer mediation
8 services to resolve disputes between FOIA requesters
9 and agencies, it is a non-exclusive alternative to
10 FOIA litigation. What does that mean?

11 It means, basically, that a FOIA requester
12 who is not happy with the final decision of the Agency
13 on appeal, they can come to us before they file a FOIA
14 lawsuit and we normally try to assist the Agency as
15 well as the FOIA requester in order to come to some
16 sort of resolution to prevent FOIA litigation.

17 And at the -- one of the requirements
18 within the statute is at the discretion of the office.
19 We may also issue advisory opinion if mediation
20 services has not resolved the issue.

21 Go to the next one. So for our mediation
22 mission, all of our mediation services are in
23 accordance with the Administrative Dispute Resolution
24 Act. And it also includes the confidentiality
25 provisions. What does that mean?

1 It means that when a FOIA requester that
2 comes to us and they want to talk to us freely and
3 explain to us what their issues are, we would not
4 divulge that information to the Agency and vice-versa.

'5 When we reach out to the Agency in order
6 to get information from the Agency, and if the Agency
7 is telling us something in confidence, we would not
8 divulge that without their permission to the FOIA
9 requester or just facilitate communication between the
10 two parties to resolve the dispute.

11 And we also provide ombud services, which
12 includes providing information on handling general
13 complaints and observation.

14 And both the requester and the Agency can
15 come to us to resolve issues. We do not take sides.
16 We are completely -- we wouldn't take any sides. We
17 wouldn't talk about, you know, you have to do this.
18 It's, you know, very, very -- you know, we advocate on
19 behalf of the requester and the Agency to promote fair
20 FOIA process. And we really try to have the parties
21 reach a mutually agreeable resolution. Sometimes that
22 happens, sometimes it doesn't.

23 Next slide. So what does the mediation
24 process entail?

25 When a customer comes to us to resolve a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 mediation, what we do is:

2 (1) We open a case. We send an
3 acknowledgement letter, much like the FOIA Unit does.
4 And we also provide a case tracking number.

5 (2) The next phase is the fact-finding
6 process. And during this process, we contact the
7 requester and we also contact the Agency.

8 Sometimes during this fact-finding
9 process, we learn that really the issues are not a
10 FOIA issue. They are complaints. They are other
11 things that has nothing to do with FOIA. And it is
12 within our right not to accept something like that as
13 a mediation for any kind of a FOIA issue. So we do
14 sometimes decline to provide mediation services.

15 (3) The next phase is really the
16 facilitation of the dispute that we have accepted for
17 medication.

18 (4) And our last stage is writing a final
19 response and closing our request.

20 So for the last section of this mediation
21 part, sometimes we write a formal letter in order to
22 close the case and sometimes we just send an email.
23 It depends on the type of cases that we get. If it's
24 a simple case, where someone wants to know whether
25 their -- what's the status of their case or what --

1 you know, when they can expect their -- a response, we
2 may respond with an email. We don't necessarily have
3 to issue a Final Response Letter.

4 The OGIS Mediation Program. So far we
5 have assisted many requesters within the 50 States and
6 the 22 foreign countries. And you know, we get
7 requests from all sorts of folks throughout the
8 country.

9 The next slide is an explanation of our
10 FOIA compliance. As I explained to you, we have two
11 statutory roles. One was mediation, one was the
12 compliance. And in our compliance review, what we
13 started doing is we realize that we need to have an
14 effective -- element of an effective program.

15 And the way we did it was we use the
16 statute as our guide. We went line-by-line through
17 the statute and we came up with elements of an
18 effective FOIA program. But because of our mediation
19 case load and really the staff side, we really
20 couldn't implement having a Compliance Review Team.
21 And basically, that the work at the time was limited
22 to just reviewing Agency's regulations.

23 But in 2014, we were able to get
24 additional staff and for that reason, we were able to
25 create a distinct and separate team from our Mediation

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Team. And this team was the FOIA Compliance Team.

2 So when we review FOIA programs, what does
3 that entail?

4 Our methodology for assisting FOIA
5 programs are:

6 Reviewing FOIA request files. We review
7 the Agency's FOIA Regulations. We look at any
8 internal guidance or internal SOPs, processing SOPs
9 that you -- that the Agency may have. We visit the
10 Agency. We interview FOIA processors and FOIA
11 professionals and we also look at any other supporting
12 documentation that the Agency may have.

13 And once we review all of those items, we
14 provide the agencies with our reports. What we do is,
15 basically, we try to assist the agencies with their
16 biggest FOIA challenges.

17 And just like our mediation services, our
18 review of Agency policies are, you know, done with a
19 focus on impartiality and fairness. We really try to
20 advocate for the FOIA process.

21 Next slide, please. So what does our
22 Agency assessments do? And in this slide, there are
23 seven steps that we take in order to complete a FOIA
24 compliance review. If this is a holistic review from
25 top to bottom, it takes about four months for our

1 office to conduct a review and issue a report.

2 If I could go to the next slide? Once the
3 report is completed, we also issue recommendations.
4 And what -- one of the things that we have noticed is
5 that so far we have completed about seven -- five
6 compliance reviews. I'm sorry. And one thing that we
7 have noticed is that no one-size-fits-all approach is
8 something that we have noticed with the administration
9 of the FOIA.

10 We have made about nearly 60
11 recommendations in five of our compliance reports and
12 what we have noticed is that most of the
13 recommendations are focused on management, technology
14 and also communication.

15 This next slide is a snapshot of one of
16 our compliance reviews. This was the FEMA FOIA Unit
17 that we had done at compliance review. And basically,
18 it has the findings on this particular page.

19 So just to give you a little bit of
20 information about the three topics that I just told
21 you about the recommendations. This slide provides
22 information about the management. Some of the
23 examples of the recommendations we have made on
24 examining the management of the FOIA Unit.

25 Some examples or recommendations are very

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 short-term and very easily implemented. And then
2 there are some that are very ambitious and they are
3 long-term.

4 The next slide provides some of the
5 recommendations that we had on technology. You know,
6 we, again, identified some short-term and very easily
7 implemented and then we also had some long-term and
8 very ambitious recommendations.

9 The same with the communications. We
10 noticed that the lack of response was a huge factor in
11 many of the lawsuits that were filed against agencies.
12 So one of the things that we typically tried to find
13 out is, you know, how do you respond when FOIA
14 requesters are trying to find out, you know, where is
15 the -- what is the status of my FOIA request?

16 And some of the recommendations are easily
17 implemented:

18 Provide requesters with estimated dates of
19 completion.

20 Communicate with them regularly.

21 Create or revise template letters. On
22 this particular point, what I want to point out is
23 some times being in the FOIA Ombudsman Office as we
24 get FOIA requests for assistance, we see the Agency's
25 response letter. And I will say that sometimes they

1 are so technical and, you know, it's just written for
2 lawyers. And what we do is not necessarily challenge
3 the Agency, but we pretty much translate what they
4 were saying in a much more simple plain language.

5 So one other item that we often recommend
6 is for FOIA Units to change their template letters and
7 make it in a more plain simple language.

8 So this is the checklist of one of our
9 compliance reviews. At the end of each compliance
10 review, what we do is we provide this checklist for
11 management, so it's much easier for them to review and
12 say okay, we will just make this many recommendations
13 on management, this many recommendations on technology
14 and this many recommendations on communication. And
15 they can easily just go and if they implement our
16 recommendations, they can just do a checkmark and this
17 is taken care of. This is closed. This is done.
18 This one is long-term. And so on and so forth.

19 Could we go onto the next one? So for
20 OGIS Compliance Roles, which is required by statute,
21 agencies may ask themselves well, what's in it for me?
22 And the way we think is that the FOIA Unit is really
23 evaluated in a much holistic way to see if they are in
24 compliance with the statute.

25 I have been a FOIA manager myself in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 past and I know how challenging it is to manage a FOIA
2 Unit. But, you know, I will say that at the time
3 OGIS, when I was a FOIA manager, was just in existence
4 for two years and the Compliance Unit was not in
5 existence.

6 But if I was in the FOIA Unit, I would
7 welcome OGIS to my unit in order for them to see and
8 observe as an impartial body to tell me what is
9 working and what is not working. And that is what we
10 feel that that's the benefit to the Agency.

11 We -- one of the -- again, what we do is
12 we analyze the data that is report to DOJ and we also
13 identify the improvements and make recommendations
14 based on that. If there are best practices, we
15 identify them and we also promote them.

16 So far OGIS has done a review of its own
17 two offices. One was the National Archives and
18 Records Administration Office of General Counsel and
19 then the second one was the Special Access and FOIA
20 within NARA. And we issue two distinct reports and we
21 also have reviewed four of the six agencies or
22 components of the Department of Homeland Security.
23 And we have issued reports for all of those right now.

24 We are -- we have just launched a FOIA
25 review of the US Secret Service FOIA Program and then

1 next will be Immigration and Customs and Services.

2 All right. Next one. We also review FOIA
3 compliance regarding a single topic. Like I
4 explained, Still Interested Letters were something
5 that was brought to us. And that is something under
6 review and we will go ahead and issue a report on
7 that. And we also do a particular part of the
8 process. It could be an intake or appeals process.

9 Most recently, we met with DoD and they
10 were very interested in OGIS' review of their
11 technology in their FOIA Offices because a lot of
12 their offices had different systems that don't talk
13 with each other. So it has created a huge problem for
14 the Agency. For that reason, they can -- you know,
15 agencies can ask us for a specific review. It doesn't
16 have to be top to bottom.

17 OGIS is not the Inspector General's
18 Office. And we are not the GAO. We think that the
19 GAO and IG shops, you know, they are -- while they do
20 review FOIA Units, their target is basically on the
21 expenditure of the taxpayer's money. Whereas with us,
22 we are subject matter experts in the field of FOIA,
23 both from inside the Government and outside of the
24 Government.

25 And we understand how the FOIA works. We

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 don't want to create problems for the agencies, but we
2 want to point out what works and what doesn't work.

3 So this is our contact information. James
4 Holzer is our new Director. I'm the Deputy Director.
5 And then we have the Compliance Team lead, Kirsten
6 Mitchell. And the Mediation Team lead, which is
7 Carrie McGuire.

8 Our information is also on our website.
9 If you go on our website, ogis.gov, you will find all
10 their information the website. Thank you.

11 (Applause)

12 FACILITATOR BURTON: Okay. Thank you,
13 Nikki. That was good stuff. You are going to be
14 staying through the Q&A, so what we are going to ask
15 folks to do is if you have any questions or comments
16 for Nikki, if you could save them until the Q&A and
17 open discussion portion, we would appreciate it.

18 Okay. At this time, it's my pleasure to
19 introduce Mr. Michael Johnson. He serves as NRC's
20 Deputy Executive Director for Reactor and Preparedness
21 Programs. He will share his thoughts on increasing
22 Proactive Disclosures. Mike?

23 MR. JOHNSON: Thank you. Thank you,
24 Butch. I want to just sit here if I can, it feels
25 awfully formal and I really think we are trying for

1 something that's less formal and perhaps more
2 interactive at the end. And besides, I didn't have my
3 lunch, so I don't want to walk to the podium.

4 The -- I was here. I'm here. First of
5 all, I wanted to just welcome everybody. And as I
6 look in the audience, I see a number of familiar
7 faces, both familiar faces from the NRC folks who are
8 FOIA experts, who work day in and day out, who know
9 much more about the process than I do and I also see
10 folks who we interact with who probably are FOIA
11 requesters and are providing a very different service
12 or a service to the public, for example, and so they
13 are on the other side of this activity.

14 I know that we are all here because we
15 think that this important. And so I just want to say
16 add my welcome to the welcome that's already been
17 given and say thanks again for showing up.

18 I'm not quite sure why I'm wedged between
19 experts because I'm certainly not here as a FOIA
20 expert. I'm not a FOIA program owner. I'm not --
21 never been a FOIA manager or administrator, although
22 I certainly have folks in my organization who have
23 served in those roles and who understand the
24 importance of FOIA and related activities.

25 I'm also not here as a FOIA lead

1 implementer, although I have had my share of FOIAs and
2 I understand both the intent of the requester and the
3 desires of the requester. I understand the work that
4 has to be done to satisfy that request and hopefully
5 make sure that things come together. So I have that
6 perspective and I'm here for that reason.

7 And I'm certainly not here as a FOIA
8 expert. I'm going to say that a number of times and,
9 in fact, after we hear from the rest of the experts
10 and they get in the dialogue, I'm going to actually
11 get up from this table and I'm going to move around to
12 the audience, so I can enjoy, participate and
13 hopefully learn from the dialogue that continues.

14 None of those reasons, I'm not here for
15 any of those reasons: owner, implementer, expert. I'm
16 really here just to add emphasis to what I see as the
17 importance of the topic and the Agency's commitment to
18 transparency and to open Government.

19 And we do have -- I fundamentally feel
20 that we have a bias towards openness. It's one of
21 certainly our principles of good regulation. And I
22 think we strive to do that in every day with every
23 activity. You know, we provide access. We have for
24 a long time provided access to information related to
25 the work that we do in ways that some don't, many

1 don't, some would say.

2 I remember actually I was thinking as I
3 was coming to this meeting that 30 years ago it was
4 unheard of to share things like inspection reports or
5 draft inspection procedures or some of the work that
6 we do in terms of follow-up on events and all of those
7 activities. We just didn't release that information
8 without having it being requested of us.

9 We do that now as a matter of routine. We
10 have decided, we have figured out that the better we
11 are at being open about those kinds of activities, the
12 better off we are going to be, all of us, both the
13 NRC, but also our stakeholders.

14 And while we won't release, we strive very
15 hard to not release information that is safety-related
16 or Safeguards or Classified. You know, classes of
17 information that should not be released. We, as a
18 matter of practice, I think, try to release in a
19 proactive way information as much as possible.

20 You know, years ago when I came to the NRC
21 I had a conversation with an attorney and Office of
22 General Counsel and I won't give the individual's
23 name, but it was an interesting discussion that we
24 had. And I was sort of making the point about why we
25 shouldn't release something that we were working on.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And this attorney was making the point that, you know,
2 Mike, it's a pay me now or pay me later sort of
3 proposition.

4 If you engage and involve and share
5 information early in the process, sometimes that
6 obviates the need to do a lot of work on the back end
7 in areas where we could have been more open. And that
8 has stuck with me and sort of reinforces the sense
9 that I have about our bias or certainly my personal
10 bias towards openness. It just makes good business
11 sense. Proactive release makes good business sense.

12 And you know, again, I think we do a
13 pretty good job. We worked hard to make it better.
14 I'm certain that we could make it better yet and
15 that's another one of the reasons why we think this
16 meeting is so important.

17 But also and actually more central to the
18 purpose of the meeting, you know, again, as you are
19 going to hear, we take very seriously our statutory
20 obligations related to FOIA. As you are going to
21 hear, we are making steady progress, I think strong
22 progress, in improving our FOIA program.

23 I have been involved, personally involved
24 actually in the last year and a half or so with the --
25 with our FOIA experts and managers and implementers to

1 try to figure out how we can improve the process. We
2 have made progress and we are going to keep making
3 progress with respect to that topic, this topic
4 because it is so important to us.

5 So but this forum, I wanted to give those
6 comments and add with that my presence, my continued
7 presence in this meeting to add emphasis to the fact
8 that I really do want us in this meeting to both
9 reflect on what we do and highlight the progress that
10 we have made, accomplishments certainly, but also we
11 want to discuss and hear from you, members sitting in
12 the room, people sitting in the room, but also folks
13 who are on the phone.

14 So again, I think this is a worthwhile
15 activity. Again, I'm peppered between experts,
16 hopefully to say let's engage, let's make this be a
17 really good meeting.

18 FACILITATOR BURTON: Thanks, Mike. Mike
19 is -- he is being modest. He may not be a FOIA
20 expert, but as one of the senior leaders within the
21 Agency, I can tell you that this program would not be
22 as effective as it is without his leadership, support
23 and guidance. So many thanks, Mike.

24 Okay. We are at the point where we need
25 to decide whether we need to take a break or whether

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we want to keep going. So what I'm going to do is I'm
2 going to ask for maybe a quick show of hands of people
3 who would like to take maybe a five minute break or if
4 you would like to keep going.

5 Not a single hand went up. Okay. All
6 right. Well, then we will just keep on pushing
7 forward.

8 Next, I'll ask Ms. Kim Morgan Butler,
9 Chief of the NRC's FOIA Privacy and Information
10 Collection Branch and Mr. Roger Andoh, the NRC's FOIA
11 Officer to brief us on the NRC's FOIA Program. Kim?

12 MS. MORGAN BUTLER: Thank you. So I,
13 myself, am also peppered in between the FOIA experts,
14 because the day-to-day operations and really the
15 momentum behind the implementation of many of the
16 things that I will speak of really goes to Roger and
17 to the FOIA Team, many of which are out in the
18 audience. So I would like to thank them for their
19 day-to-day work and activities.

20 Over the years in terms of FOIA, we have
21 gone, as Mike mentioned, from a place of more -- we
22 have moved towards more transparency and so as a part
23 of that, the NRC held a public meeting in October of
24 2014. And that meeting was attended by members of the
25 public and from representatives of external

1 stakeholders such as Greenpeace and the Union of
2 Concerned Scientists and many -- some of you in here
3 may have given presentations even during that meeting,
4 because it really was an opportunity for us to get
5 feedback on the FOIA program.

6 And so my portion of this discussion is
7 really going to focus on some of the feedback that we
8 received and the things that we have implemented since
9 that time to make the program more effective. As
10 mentioned by Nikki, we strive to be an effective FOIA
11 program and so we have looked at some of those things.

12 So during the public meeting in 2014, the
13 external stakeholders focused on three areas of
14 concern and that was document markings, redaction
15 consistency and response time. So what has happened
16 since then? Next slide.

17 We heard you. So we took some of that
18 feedback and we prescribed some goals for ourselves.
19 And so what were the goals? And we had a time frame
20 over to implement -- I mean, to achieve those goals.
21 And we -- I will say that we looked at it over the
22 next fiscal year, but we are still continuing to look
23 at some of these things.

24 There has been some definite wins, but
25 there has been some challenges and some lessons

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 learned, so we are still working towards it. And so
2 our goals for the program was:

3 (1) To look at backlog and to eliminate
4 the backlog if we could.

5 (2) To increase the FOIA training
6 internally for both the FOIA staff and the staff that
7 we interact with inside the NRC, which are namely our
8 FOIA coordinators.

9 (3) We are looking for -- we were looking
10 toward better customer service. I don't think it's a
11 mistake that we are in the Chief Information Office at
12 Customer Member Service Division, because we really do
13 provide a customer service, both internal and external
14 to the Agency and we should look at our work in that
15 way.

16 (4) We also look to have more frequent
17 engagement with requesters. And Roger has done a lot
18 towards that end.

19 (5) And we have -- we also look at
20 addressing staffing issues.

21 Next slide. So how did we do? Well, at
22 the end of FY14, there were 24 backlog FOIA requests.
23 And at the end of 2015, there were only 8. So we made
24 some progress there.

25 Now, in full disclosure, we are somewhere

1 in the middle, at this point, but we are still working
2 towards elimination of the backlog. So we are working
3 towards that, that is still a work in progress.

4 I receive an update at least biweekly, a
5 very specific update of each of the cases that are in
6 our backlog, and so there are some strategies that I
7 am looking towards to interact to get us towards
8 eliminating the backlog.

9 So we did this even while we experienced
10 some loss of some of the senior specialists, so we
11 mention this as a -- from a perspective of knowledge
12 management versus a staffing issue. We are saying
13 that we lost some people who were very -- they had
14 very unique knowledge of the FOIA program and they
15 were sharing it with our staff at that time and we
16 lost them. And so we have, you know, taken some steps
17 to get us to the place where we have maintained that
18 area of knowledge. You know, and we are looking at
19 that in the face of an increase in the number of
20 requests and appeals we receive.

21 So in terms of that, we had a turnover
22 with our FOIA Officer, so we got back some of that
23 knowledge. And we have been doing some special things
24 that I'll mention in the next slides. So next slide.

25 So first, we looked at knowledge

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 management issues in terms of more training. And so
2 for the FOIA staff, the staffers that actually work in
3 my branch, we started looking at some of the external
4 trainings on FOIA that was available -- that are
5 available to us and a number of these trainings are
6 free, so it's a -- it was a good opportunity for us to
7 take advantage of these trainings.

8 So we had attendance at the Department of
9 Justice Office of Information Policy seminars. We
10 attended some of the OGIS workshops. We also attended
11 the AINS conference, AINS is a vendor and they are the
12 FOIAXpress vendor and so we got -- we became more
13 trained in our technology and I'll mention our
14 technology later. And we also attend professional
15 conferences, such as the American Society of Access
16 Professionals. And that's an ongoing thing.

17 Next slide. For staff that are NRC staff,
18 but not within the FOIA Office, there was a -- Nikki
19 mentioned there is a -- I think it was Coast Guard.
20 They are looking at consolidating their FOIA program.
21 We looked at that as well and we found that it works
22 better when we have a FOIA staff centrally, but also
23 have experts which are coordinators within each of our
24 program offices.

25 And so they are the link between, because

1 we are so technically-oriented, they are the link
2 between the technical and the FOIA knowledge for us.
3 And so we use those, we used all of our external
4 training as a train-the-trainer type activity. And
5 then we brought that training, that knowledge back to
6 our staff. And so we went out and trained our
7 coordinators and the NRC staff, in general.

8 And so what do we do? We had an annual
9 town hall meeting for NRC staff. We also revised our
10 coordinator reference manual and instituted regular
11 coordinator meetings and we have those monthly. Do we
12 have those monthly or bimonthly?

13 MR. ANDOH: We try to.

14 MS. MORGAN BUTLER: Yes. And the FOIA
15 Officer also reached out to the program offices where
16 our coordinators are located and gave presentations to
17 the leadership and the program officers there. And so
18 we -- specifically on FOIA and our goals and the
19 actual law. And so that was actually a success where
20 we disseminated. We were able to communicate a little
21 bit more to our program office.

22 And we also made DOJ training modules
23 available to our staff in iLearn, which is our
24 training system. So those trainings are available on
25 demand for our staff.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Next slide. We also looked into our
2 technology. We are in the Office of Chief Information
3 Officer, so, you know, without a doubt we wanted to
4 make sure -- not just because we are there, but
5 because it's the right thing to do, we wanted to make
6 sure that we look at our technology. And so we
7 brought FOIAXpress on-board, but we also looked at
8 other things, other technology that could be improved.

9 And so we are on this path to migrate to
10 electronic redaction. We are not there yet, but we
11 are on the path. And we are steadily on that path.
12 I mean, so we are not -- you know, we are marching
13 towards it.

14 And so right now we have updated our Adobe
15 software and so it's available to staff. And we have
16 also rolled out a RedactXpress to specific offices to
17 OIG and OE who both volunteered to try out that
18 software. And once we receive lessons learned, we are
19 hoping to expand the audience.

20 We also created and revised all of our
21 forms in processing FOIA requests. And we -- that
22 included making them PDF-fillable. So that doesn't
23 sound like a big deal, but as a staff member that
24 would have to fill out that information, it is leading
25 us more towards electronic dissemination of the

1 information.

2 We also created or revised custom
3 templates for letters and emails in FOIAXpress that
4 are used internally and externally during the FOIA
5 process. So we are hopeful that our letters are in
6 plain language, but we are -- that's an area that we
7 can continue to look at, but we do have the templates
8 available and in place.

9 Given our increased use of email to
10 deliver FOIA responses, we also have a mechanism to
11 send out our forms electronically to do a survey on
12 when the requesters are sent their final responses.

13 We also revised web-based FOIA request
14 submission. We revised our FOIA web-based submission
15 form. And lastly, and this is mostly internal
16 technology update, we established a FOIA Sharepoint
17 site. And it allows the FOIA Team to share our
18 guidance information. We have a Desk Guide. We have
19 weekly FOIA minutes -- meetings and we have minutes
20 from those meetings.

21 But it also allows our coordinators both
22 in NRC programs and the regions to post any of their
23 electronically-bracketed records in lieu of mailing
24 them. So that's another area where we are moving
25 towards more electronic interactions.

1 Okay. Next slide. We are also looking at
2 transparency within the FOIA program. So in terms of
3 transparency, we have standardized criteria for FOIA
4 responses that are made publicly available. And we,
5 as part of our training program, have made sure that
6 every -- all of the coordinators and FOIA analysts
7 within my branch are aware of those criteria.

8 We have also created a new search field on
9 a FOIA webpage to shorten the time that the public
10 spends having to search for FOIA-released records.
11 And so that is a -- that -- you can -- it's fillable
12 on our public website and that gives you a first line
13 of searchability for information on our FOIA page.

14 And we also updated our Desk Guide,
15 because we have had so many changes to the program
16 over the last few years, we have now updated our Desk
17 Guide, our day-to-day, and that's actually available
18 publicly on our FOIA webpage.

19 Okay. Next slide. In addition to some of
20 the things that I mentioned, we also created a new NRC
21 form and this was another thing that is internal-
22 leaning, but under 10 CFR Part 9.25(h), there is a
23 delegation of discretionary release authority that is
24 given to the office directors at the NRC and/or either
25 the office directors or their senior management FOIA

1 official which is within each program office and
2 region.

3 And so those -- either the office director
4 or the senior management FOIA official, if they
5 determine that a record can be withheld under FOIA but
6 it is -- it will not harm -- it will not be harmful to
7 the Agency to release, they can make that decision to
8 release it to the public. And so we -- under this new
9 form and in our Management Directive which is
10 currently being updated, we are allowing -- well, we
11 have the authority now or we are interpreting the law
12 to say that we can then have the authority delegated
13 to a GS-15 staff level or above to make the
14 discretionary release determination from the FOIA.

15 So that helps us to be more transparent,
16 because it puts within the program owners' domain the
17 information, the determination whether the information
18 can be disclosed, even if under FOIA it's not required
19 by law to be disclosed.

20 Okay. Next slide. We have also looked at
21 our consistency, so we have within and we have
22 instituted weekly meetings among FOIA specialists. We
23 have also instituted quarterly meetings with program
24 office FOIA coordinators. As I mentioned, we have a
25 Desk Guide for the FOIA specialists and that's on the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

(202) 234-4433

1 public website. We have also revised the FOIA
2 Reference Guide for FOIA coordinators and there are
3 electronic templates for internal/external guidance.
4 I mentioned that before.

5 Next slide. And the last thing under
6 consistency is that we use share drives within the
7 FOIA Team within our branch to archive Administrative
8 Appeal Response Letters, frequently requested records
9 and other correspondence items as well as instructions
10 to staff.

11 So we are looking to build. You know,
12 there is this quote here "Trust is built with
13 consistency" and we are looking to be more consistent
14 in the way that we administer the FOIA program.

15 Next slide. So we have seen much
16 progress. I'm going to -- so I have been at the NRC
17 for over a little over 10 years now. I have been with
18 the FOIA program for two months. And so I'm going to
19 hand it over to Roger. I mean, I have the same
20 experience as Mike where I have interacted with the
21 FOIA program at different -- in different areas, but
22 I'm going to hand it over to Roger to give some
23 remarks. He is our day-to-day FOIA person and
24 understands the program and he works with the FOIA
25 staff, both in my branch and across the Agency. So,

1 Roger?

2 MR. ANDOH: Thank you, Kim. Good
3 afternoon, everybody. I joined the NRC in November
4 2014, so I have not -- I'm relatively new to the
5 organization. I came to NRC from DHS, so I definitely
6 brought a different perspective to the FOIA program
7 since I was used to a different set of records that we
8 handout and the way we do things were different.

9 But I was given my marching orders when I
10 came here. One of which have not accomplished yet,
11 which is to bring our backlog to zero. I have not
12 done that yet, but we continue to work towards making
13 that a reality.

14 The other thing that I had to focus on was
15 the FOIA program was audited by the Office of
16 Inspector General in 2014 and they, OIG, came up with
17 a recommendation to improve the FOIA program.

18 One of the things that came up that was
19 highlighted was the fact that we needed to leverage
20 the use of technology to make our program better. For
21 those of you who are not aware, the way the NRC
22 program works is that when we receive a FOIA request,
23 the -- we are supposed to identify program offices
24 that we believe would have responsive records.

25 And that means each program office is

1 supposed to provide its recommendations as to what
2 information they believe can and cannot be released.
3 And those recommendations are provided manually,
4 pencil-bracketing. That is what our current Manual
5 Directive requires them to do.

6 And therefore, that in and of itself was
7 changing, because it can end up slowing the process
8 down in multiple ways. One, the folks had to print
9 electronic documents, bracket them manually, submit
10 them to us and we will scan them and then draw over
11 the same boxes that they have, you know, drawn at the
12 program office level.

13 So one of the things was to leverage
14 existing technology, what we had, and use that. And
15 certainly, I came from an environment where we didn't
16 do that, so that was a shock to my system. So I
17 certainly took that and said we need to move towards
18 electronic-bracketing and get -- and move away from
19 pencil-bracketing.

20 So I -- since I have been here, I have
21 been a cheerleader for doing that. I have reached out
22 to different program offices. I have had the
23 opportunity to talk about it. I have talked about it.
24 Certainly, it's going to be a paradigm shift because
25 a lot of people were used to doing it that way, that's

1 how we done it for years.

2 But fortunately, a lot more program
3 offices have begin to see that we was doing that. We
4 are hoping that in the very near future that manual-
5 bracketing will be a thing of the past and that all
6 bracketing of documents will be done electronically.

7 Another thing also that at least I have
8 brought up and tried to champion is that one of the
9 exemptions that we apply the most are the personal
10 privacy exemptions. And the NRC is a technical
11 organization. And certainly they are setting records
12 that we review in the FOIA Office where we don't have
13 the expertise to make determinations as to whether
14 this information can or cannot be released.

15 So we certainly need the input of the
16 program -- of the techno specialist to let us know
17 whether this information or cannot be released. And
18 so they play a vital role in that, but one of the
19 things I have been trying to stress is for them to
20 move away from the things that we, as FOIA
21 specialists, with our knowledge should be able to do.
22 And that is still a work in progress.

23 But those are some of the things that I'm
24 trying to do to move the program along to make it
25 easier on the program officers. They are not spending

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 an inordinate amount of time trying to process FOIA
2 documents and for us in the program office that we can
3 get responses quickly to FOIA requesters.

4 I see myself as a liaison between -- you
5 know, even though I work for the Agency, I work as a
6 liaison between FOIA requesters and the program
7 offices, sometimes I work as a liaison between the
8 program officers and the FOIA Office. Sometimes with
9 different interests, right?

10 So the FOIA request is you want your
11 records and you want them timely and you want to get
12 whatever it is you are looking for. And the program
13 offices also have their own competing interest and
14 they want those protected, too. Somewhere we have to
15 find, you know, a happy medium and have a balance.

16 But one of the things that I think that we
17 have been successful in doing has been to open, I
18 think, more of the lines of communication between FOIA
19 requesters and the Agency when it comes to FOIA. I
20 have received, you know, multiple emails from FOIA
21 requesters. I try and make sure to respond to them
22 timely. And when I -- we have screwed up, we have
23 owned up to it. And where I have had to explain what
24 is going on, I have done so either, you know, over the
25 phone or by email.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 We certainly have embraced all the
2 principles of OGIS. I have been making sure that when
3 we send our acknowledgment letters, we tell the
4 requester an estimated time that we are going to
5 respond to request. We don't always meet that
6 estimate, but at least we try to do that.

7 We have also facilitated in sometimes
8 meetings between, telephone conferences between, FOIA
9 requesters and the program offices where sometimes
10 that discussion would be much more helpful in either
11 fashioning this -- the scope of the request or
12 probably explaining exactly what it is that they are
13 looking for, because we might not really get what it
14 is that the requester is asking.

15 And I think at least I have sat in a
16 couple of them, they seem very successful and at the
17 end of the process what we do is we document what the
18 rescoping of the request is and we move forward with
19 it.

20 I understand that one of the things that
21 FOIA requesters have had an issue with with the NRC
22 and certainly not just this office is the question of
23 fees. I know that when I solicited ideas from FOIA
24 requesters with regards to what they want us to talk
25 about, one of the things they brought up was fees.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

(202) 234-4433

1 And I think that maybe they think we might be
2 arbitrary and capricious in the way we decide when to
3 impose them and when we don't.

4 Do we always get it correct? No. But the
5 issue of fees is an issue that is an issue across the
6 federal government. Congress certainly intends that
7 fees should not be used as a barrier to prevent the
8 public from knowing what agencies are doing.

9 But on the other hand, right, I think the
10 public also needs to recognize that agencies are
11 expending resources in responding to FOIA requesters,
12 that's a fact. And I was just reading a couple days
13 ago and saw this statistic which said that in 2013
14 that the Federal Government across Agency-wide spent
15 \$416 million in FOIA expenses and only collected 1
16 percent of it.

17 So certainly for the most part, 99 percent
18 of the time, federal agencies are not using fees to
19 prevent the public from getting access to information,
20 because we are really not collecting a whole lot of
21 money. We are only collecting 1 percent of what is
22 charged. Now, and we spend way more on responding to
23 a FOIA request than we bring in.

24 And certainly a program office -- FOIA
25 offices don't collect the FOIA fees, that goes to

1 Treasury. So we don't even see it anyway. But what
2 we try to do when it comes to determining fees is that
3 every FOIA requester or the OMB, the Office of
4 Management and Budget provides FOIA Fee Guidelines and
5 every Agency is supposed to come up with regulations
6 that interprets that.

7 But generally, that -- requesters are
8 placed in two different categories and so you have on
9 one end, the favorite categories which basically can
10 get FOIA requests pretty much at no cost and then you
11 have the, I would call them the, unfavored requesters
12 who are the commercial requesters where -- who are
13 considered folks who are requesting records to benefit
14 the accumulation of interest. And then in between are
15 everybody else who -- that the NRC refers to as non-
16 exempted or in other agencies are called others.

17 And so that drives -- the requester drives
18 the fee category. And so it's not necessarily who is
19 making the FOIA request, because we get requests from
20 attorneys, but if they make it clear that they are
21 asking for these documents on behalf of a client, then
22 it's the client's role/ status is what drives what the
23 fee category is going to be.

24 One other thing that we have also tried to
25 do is we moved certainly away from providing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 responsive records on paper and, therefore, we hardly
2 ever charge for duplication any more. In fact, I
3 think we rarely send responses out on paper any more.
4 We either send it out electronically, by email or we
5 send it on a CD.

6 We -- since at least I have been here, the
7 NRC is considered a medium-size agency when it comes
8 to FOIA. So you have agencies that have the process,
9 who receive 1,000 requests a year and the medium-size
10 are those that receive between 500 and 1,000. So we
11 receive between 500 and 1,000 requests every year.

12 Since I have been here, I have seen a
13 steady increase, because we track every month how many
14 requests we receive. We also track how many cases we
15 close. We also track the statistics of our FOIA
16 specialists and they will tell you every Monday or at
17 least I try to every Monday follow-up with every
18 requester to give a status of where they are on their
19 cases.

20 So we are continuing to manage the cases.
21 I understand that our job is to get cases out of here.
22 Certainly, we try to do it timely, but we need to make
23 sure that we are being consistent and that we are also
24 protecting the interest of the Agency and ensuring
25 that we are not releasing information that cannot be

1 released.

2 So just as a backdrop, just in FY16,
3 right, at the same time last -- at the end of last
4 month in 2015, we had only received 180 requests. I
5 just checked this morning at the end of February of
6 2016, we have received 386 requests, right? So we are
7 still doing it with the same number of people. But I
8 think it goes to show that there are things that we
9 are doing in terms of improving processes is helping
10 us manage the cases.

11 Because I looked at our backlog and the
12 backlog numbers, to date, for this year are lower than
13 they were last year. And so we are moving in the
14 right direction, but also recognize the fact that we
15 are not where we want to be. We are also not where
16 FOIA requesters want us to be or where they think we
17 should be and we think this is a perfect opportunity
18 for you to share with us your questions, your
19 comments, your suggestions.

20 The only caveat I would want to say here
21 would be I would want to not talk about specific
22 cases, if I can, because members of the public, those
23 who are listening in and other folks are not going to
24 benefit if we are discussing a specific case.

25 But if you can couch your question in a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 manner that everybody can benefit, then I can answer
2 it to be a much more general question.

3 So at this point, the floor is open to
4 questions.

5 MS. HIRSCH: I am going to add one thing.
6 If you want to talk about specific cases though, you
7 can always contact the NRC's public liaison, that's
8 me, and my number is 0563, with the 301 and the 415
9 ahead of it. So feel free to do that.

10 FACILITATOR BURTON: Okay. Thank you.
11 And I think with that, we are ready to go into our
12 open discussion session. Okay. I'll remind everybody
13 if you want to speak, we have got a couple of mikes
14 here on the aisles. If you would rather stay in your
15 seat, I can bring the hand-held to you.

16 If you decide to speak, please, give your
17 name and your affiliation. And so what I'm going to
18 do is I'm going to start with folks here in the room
19 and get a couple of comments or questions here and
20 then we will go to folks on the phone. Okay?

21 So let's start here. Anybody? Comment,
22 question? Can you turn the aisle mikes on, please?
23 Sorry, give us just a minute here, I think. Okay.
24 Use that. It looks like I'll be coming to you anyway.
25 All right. Go ahead.

1 MR. LOCHBAUM: This is the fourth time.
2 We are one past charm. My name is still Dave
3 Lochbaum. I'm with the Union of Concerned Scientists.

4 First of all, I would like to recognize
5 that things are much better today than they were in
6 October of 2014. Response times are much better. I
7 have actually had a couple responses the next day,
8 which is way beyond my expectations. And in general,
9 the response times are much better.

10 In addition, one of the things that I'm
11 really encouraged about is when issues come up, there
12 is an opportunity to talk about those and get them
13 resolved, either fixed or explanation for why it has
14 got to be the way it is. So I really appreciate that
15 engagement, because that helps. And for the ones that
16 don't -- that take a little bit longer also get the
17 communication explaining that for these reasons this
18 is going to take so long. So that really helps also.
19 So I really appreciate and acknowledge those efforts.

20 I have a couple -- three questions. One
21 is on the letters, the response letters we get when we
22 submit a FOIA, I don't really understand those
23 letters. I have tried. I have never paid a nickel
24 for a response or for documents request. Sometimes --
25 and I fill them out all the same, I think. I always

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 say I'm educate -- I represent an educational
2 organization. And I also answer the nine fee waiver
3 questions.

4 And some say I'm an educational
5 organization, some say I'm not exempt, but my -- I'm
6 either an educational organization or I'm not, but
7 sometimes I am and sometimes I'm not. And my
8 understanding is that if I am an educational
9 organization representative, then I don't have to fill
10 out the nine questions, but -- so I don't know why
11 that work -- it's not consistent, but I don't have to
12 pay. So at the end of the day I guess that's the most
13 important thing. So I guess I don't understand that
14 response letter.

15 The second thing we have had a couple
16 times over the last year is the out-of-scope issues.
17 A lot of the document has been redacted or -- because
18 it was claimed to be out-of-scope. So my thought is
19 if I ask in the future for all documents containing
20 some tricky phrase, then I should get the entire
21 document with nothing, because I'm asking for the
22 document containing the tricky phrase, not the tricky
23 phrase.

24 So would that be a way around this out-of-
25 scope redaction thing that we are facing? You can get

1 back to me. You don't have to have the answer now.

2 And the last thing is something we
3 recommended when this meeting was first talked about
4 last fall was we would like to see at least the
5 bibliographic information available for all records
6 that are in ADAMS but coded as non-public.

7 Right now because we don't have that
8 information, we basically ask for the waterfront.
9 Everything that mentions the word nuclear, which puts
10 a burden on the staff and us in reading all those
11 documents, but if we had a bigger list, then we would
12 be able to select M, L, X, Y and Z, which would
13 hopefully make it easier for the staff and speed up
14 the response time.

15 So if that's an option, we would like to
16 see it happen. Thank you.

17 FACILITATOR BURTON: Okay. Thank you,
18 Dave. Anybody want to respond to that?

19 MS. GRAMIAN: I would love to respond to
20 you. I'm an impartial part of an Agency. And one of
21 the things that we see often with --

22 (Trouble with microphone.)

23 FACILITATOR BURTON: Wait a minute. Begin
24 again.

25 MS. GRAMIAN: One of the things that we

1 see in my work is exactly what you just said. Some
2 times FOIA requesters come to us and say, you know,
3 the Agency has scoped out a lot of information that,
4 you know, I had submitted a FOIA request for, you
5 know, some nuclear site, whatever, but -- and I had
6 specifically asked for this kind of information, yet
7 the Agency has redacted a whole bunch in between and
8 they have scoped it out.

9 One of the things I think that the
10 requesters community need to understand is if you have
11 asked for specific information and the Agency has
12 scoped out particular information, it doesn't mean
13 that they are trying to hide something. It just means
14 that it's much faster for them to respond to your
15 request that contains the specific information that
16 you are seeking.

17 I'll give you an example. While I was at
18 DHS/OIG, an organization, interest group submitted a
19 FOIA request and then they filed a lawsuit. I went to
20 them and asked them you have asked for information
21 about this particular issue. As attachments to our
22 documents, there are medical records of a particular
23 person. I think they are not responsive to a FOIA
24 request, but if I don't tell you right now, you are
25 going to litigate this.

1 And the requester didn't trust me and
2 asked that everything as an attachment should also be
3 processed, which was exempt anyway. So it took me a
4 lot longer to respond to the requester when I had
5 actually gone to the requester and said look, the
6 attachments are not responsive. They are medical
7 records. And you wouldn't be able to get them anyway.

8 So sometimes agencies scope out
9 information in order to produce records in a faster
10 way.

11 MR. ANDOH: Okay. Thank you. All right.
12 Let me -- oh. I am going to address the three
13 questions that Dave you asked.

14 The last one, since it is outside of my
15 lane, I can't make decisions on those. I would table
16 that and then discuss that with the appropriate folks,
17 if you don't mind here, because that's of really --
18 the FOIA we don't have any control over.

19 MS. MORGAN BUTLER: We don't own it.

20 MR. ANDOH: We don't own the program.
21 With regard to your fee category, you are right. You
22 are correct. Your fee category should -- your
23 indication is -- you are what you are or you are not.
24 And we should not be changing it. So to the extent
25 that we have, I apologize. We are going to make sure

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that we fix that.

2 And I'm glad you brought up the issue of
3 fee waiver. Because of your fee category, your
4 favorite, you can't -- the only fees that you can be
5 charged are duplication costs, over 100 pages. And if
6 you receive documents electronically, you pretty much
7 get everything for free.

8 So you really don't need -- and this goes
9 to everybody, if you are in -- if you are a member of
10 the public, or you are an educational institution or
11 a non-scientific educational -- a scientific -- a non-
12 scientific educational institution, you don't have to
13 NRC -- you don't have to fill out -- make a request
14 for a waiver of fees because, because of your fee
15 category, we can't charge you fees anyway. So you are
16 never going to get -- you are never going to be
17 charged any fees.

18 Okay. With the issue with regard to out-
19 of-scoping, again, that also has been an issue, an
20 area of contention. Generally speaking, when a FOIA
21 request is received by the Agency, let's go with us,
22 we read the request to determine what are the confines
23 of the request. What is it that this person is asking
24 for? Okay.

25 Sometimes it is pretty fixed and sometimes

1 it might be fluid. So I'll give you an example of a
2 fixed one. I'm looking for all documents from this
3 date to this date on the subject. Well, that's
4 crystal clear. So anything before or after is out,
5 right? Because you pretty much narrow it down to a
6 specific time period.

7 Now, sometimes you might say I'm asking
8 about documents about this subject matter, right? But
9 maybe that's how the matter connects with something
10 else. And that's the way sometimes minds could differ
11 as to whether those other documents are so inter-
12 related that they should be considered within the
13 scope or are they distinct that we should say they are
14 out of the scope. Okay?

15 So the goal is, for us is, we need to make
16 a determination as to whether the information you are
17 asking, those multiple subjects that -- are contained
18 within the responsive record, because that happens.
19 Sometimes agencies for administrative purposes will
20 combine different subjects within a set of records or
21 even on one particular document. It could be an
22 email. And I could be asking about a FOIA request
23 about David Lochbaum, but I could also throw in there
24 oh, by the way, I need you to check on this other case
25 for somebody else, right?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So that somebody else has nothing to do
2 with Lochbaum asking about his request. It is all
3 contained within the same email, right? Because I'm
4 not thinking to not mix them up.

5 We also have that with the commissioners
6 where you might be asking about a specific subject
7 matter, but they give reports and on that report has
8 multiple subjects on the same page. And so if we can
9 distinguish and go these are outside, you didn't ask--
10 basically, out-of-scope is that's not what you were
11 asking for, right? And so it's out.

12 Certainly, if we provide you with
13 documents that have out-of-scope on there, right, we
14 still -- we are still denying you information. We are
15 just saying that it's beyond the scope of your
16 request. And certainly, you are certainly free to say
17 okay, I want the stuff that you took -- you considered
18 out-of-scope. And that could be a new request and we
19 would have to honor that.

20 But I want to piggy on what Nikki said is
21 that the goal of removing things causes things out of
22 scope is not to hide the ball. It is because we made
23 an determination that that information is not what you
24 are asking for. Okay? And so if that information
25 happens to be on a single document, even if it's on a

1 single document, those portions will be marked as out-
2 of-scope.

3 Now, the Department of Justice has come up
4 with different guidance on that. Okay? So they have
5 -- in some instances where they say well, if
6 information that is contained within a record. If
7 it's within the scope, if it's on the same page -- if
8 there is information within the scope on the document,
9 the entire page is responsive.

10 But the bottom line is that we are not
11 trying to hide the ball. We have made a determination
12 that that information is beyond the scope of the
13 request and that's why it is carved out.

14 FACILITATOR BURTON: Thank you, Roger.
15 Anybody else want to weigh in on that? Okay. I'll
16 take one more comment or question here and then go to
17 the phones and then we will come back.

18 MR. GUNTER: Could you take two?

19 FACILITATOR BURTON: Okay. We will take
20 two.

21 MR. GUNTER: Thank you. My name is Paul
22 Gunter and I'm with Beyond Nuclear.

23 This is a very general question, but I
24 wanted to get some sense of how you triage requests
25 coming in --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. ANDOH: Okay.

2 MR. GUNTER: -- to the Department. And
3 it's not first come, first serve, I would presume, but
4 that you have some kind of triage program for managing
5 priorities that could be, you know, violations or
6 could be safety issues, but how do you screen that?

7 MR. ANDOH: Okay.

8 MR. GUNTER: And also, how do you deal
9 with repeat requests --

10 MR. ANDOH: Okay.

11 MR. GUNTER: -- that before a FOIA is
12 completed, if a requester puts in another request on
13 a different issue, but maybe just as germane to
14 getting out into the public. What do you -- how do
15 you decide?

16 MR. ANDOH: Could you repeat that second
17 part? I want to be clear on the second part.

18 MR. GUNTER: Yeah. How do you decide --
19 I'm sure you guys are busy and you get a lot of
20 requests. And some of us put in multiple requests.

21 MR. ANDOH: Right.

22 MR. GUNTER: So how do you treat a
23 multiple requester? Any different from someone's
24 first request?

25 MR. ANDOH: Okay. Okay. Okay. All

1 right. The way we triage cases, so when we receive a
2 FOIA request, which could be either by email through
3 our portal or hand-carried, what we do is that we
4 input the FOIA request into our FOIAXpress system,
5 which is our case management system.

6 And then after we go through the things
7 about acknowledging the request, a specialist -- cases
8 are assigned to specialists. Right? So that's -- in
9 the NRC, cases are assigned to a specialist. So every
10 -- I assign cases as the FOIA Officer. I assign cases
11 to different specialists.

12 So generally, typically, what I'll do is
13 if -- I tend to move similar types of requests where
14 the specialist has experience in those, in that
15 particular -- in those records to the particular
16 specialist. But cases are assigned to their
17 specialist. Then the specialist then determines,
18 based upon their knowledge or -- and the information
19 in the request, which program offices would have
20 records responsive to the request.

21 So each FOIA specialist handles their
22 caseload. We don't treat multiple requesters any
23 different from someone who has made a FOIA request one
24 time. So and what we do is that once it has gone up
25 to the program offices, depending upon whether fees

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 could be charged, if fees can be charged, then what we
2 do is we initially ask for a fee estimate from the
3 program offices. How much is it going to take to
4 process the request?

5 Because that is part of what is considered
6 perfecting the request. If there are any fees to be
7 charged until we have discussed all those issues, the
8 request is technically as if it has not been received.
9 But once we have gone past that, then we move into now
10 the programs are supposed to provide us records. So
11 then they give us and we put a FOIA request into two
12 tracks. A simple track and a complex track.

13 A simple track is basically we are saying
14 that based upon what is requested, we can respond
15 within a 20 working day statutory period.

16 Or if we believe that we cannot, and we
17 have to meet certain criterias, and we -- we make sure
18 that when we send out acknowledgement letter that we
19 tell you why your request is placed in the complex
20 track. And our complex track is cases that are going
21 to be 30 days and over. And we tell you why that is
22 going to -- why that happens.

23 And then if you want us to be able to
24 shorten the time frame, that gives you an opportunity
25 to narrow the scope of your request.

1 MR. ANDOH: Okay.

2 MS. MORGAN BUTLER: So it really is first
3 come, first serve, but there is different
4 circumstances that drive the response. So as we send
5 them out to the program offices or the regions, they
6 may have alternate -- I mean, they may have different
7 priorities and so one office may get back to us the
8 next day whereas another one it may take them 10 days
9 out of the 20 days.

10 So we have less control over that time
11 once we send them out to the program offices, but then
12 we do interact with them and stay in communication,
13 follow-up and remind them of the time line.

14 MR. ANDOH: And just for your awareness,
15 the NRC requires program offices in providing a
16 response as such and the recommendation within 10
17 days. And we have -- they have metrics that every
18 month that we basically score them on how they are
19 doing and it goes up to their office director level,
20 so they know how they are doing.

21 So and I know, because they get upset when
22 they look at the metrics and go oh, we did better than
23 that. So they are conscious of -- they strive to meet
24 their metrics in providing us with documents quickly.
25 Sometimes, depending on the nature of the request,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 they blow that 10-day time frame, but we try to let
2 the requester know that it's going to happen.

3 And we also -- I mean, our Agency also
4 have what we call expedited requests. So -- and we
5 have specific criteria we are supposed to meet.
6 Expedited request basically means I get to jump the
7 line, okay, because of what I am asking for and who I
8 am and what I need to do with it. Don't treat me any
9 differently, especially before anybody else. So we
10 have that, too.

11 MS. HIRSCH: I just want to add that, at
12 least you can remind me what time period this was, it
13 was either first quarter of '16 or for '15. We had
14 the best response time in offices meeting their 10-day
15 metrics that we had.

16 MS. MORGAN BUTLER: Yes, '16.

17 MS. HIRSCH: There were only three or four
18 offices who didn't meet their metrics 90 to 100
19 percent of the time. And there were probably 10 who
20 actually made it 100 percent of the time. So that's
21 due to Roger's reaching out to the program offices and
22 helping to --

23 MS. MORGAN BUTLER: And our FOIA --

24 MS. HIRSCH: -- spread the word from the
25 top down, basically.

1 MS. MORGAN BUTLER: Yes. And also our
2 analysts and coordinators, everyone has been
3 communicating.

4 MS. HIRSCH: Oh, yes, it's everybody.
5 It's everybody.

6 MS. MORGAN BUTLER: Yes.

7 MS. HIRSCH: But a lot was Roger.

8 MS. MORGAN BUTLER: It is a lot Roger, but
9 it's them, too.

10 FACILITATOR BURTON: Thanks. Jim?

11 MR. RICCIO: Hi. This is Jim Riccio with
12 Greenpeace. First, I would like to offer you an
13 opportunity to push back on OIG. I think OIG should
14 also leverage technology. I'm specifically speaking
15 about the fact that they don't allow their not audits,
16 but investigation needs to be placed in ADAMS.

17 It is rather embarrassing when I get
18 documents from people that don't even work on nuclear
19 issues going hey, Jim, there is an entire trove of
20 Government OIG investigations at this place called the
21 Government Attic, but I can't find them in ADAMS
22 because they are not in ADAMS.

23 Now, when a member of the public actually
24 is working on a reactor issue, you know, or a waste
25 issue or something like that, they expect and, you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 know, I think rightfully so, that they should be able
2 to find that information in the Government systems.

3 And when the IG uses its authority to keep
4 that information from being entered into ADAMS, it
5 doesn't really reflect openness or transparency or any
6 of the catch phrases that we were used so often at the
7 RIC over the last couple of weeks.

8 So I wish I could go to OIG and ask them
9 to actually step up to the plate and put all of their
10 work, once it has been redacted obviously, into ADAMS.
11 I understand why they wouldn't want to. Some of it is
12 very salacious and I wouldn't want it in there either
13 if I had, you know, done some of the things that has
14 gone on in this Agency.

15 But there are things that are also in
16 there that have to do with the safety and security of
17 the American public that have to do with operating
18 reactors. And we would like that information actually
19 placed into ADAMS.

20 The other thing I have been running into,
21 one thing I want to say is you guys have been great.
22 I understand the back-load that you had to deal with
23 because of Fukushima. In both the requests that I
24 have made and in the times where I haven't even had to
25 file a request, you guys helped me work through and

1 get information that should have been in the public in
2 the first place and you have done it in a rapid
3 manner.

4 The one issue that I did have and it's not
5 your issue, because I understand it took a long time
6 to get the information out of the Agency about, you
7 know, Duke and the flooding problems down at Oconee,
8 and, you know, that FOIA request took three years.
9 The only thing that gives me any solace in that is it
10 has taken the NRC and Duke even longer to fix the
11 problem. It still isn't fixed. It still won't be
12 fixed until 2017 or 2016, depending on which of the
13 different FOIA documents I need.

14 But again, you guys have done a very good
15 job. But the one issue that we raised back in '14 was
16 how this Agency has been misusing security clearances
17 and maybe Ms. Gramian has an idea about this as well,
18 because, again, with the FOIA or with the OIG
19 documents and -- I'm sorry. Sorry, sorry.

20 Yes, so you may have ideas on how we might
21 be able to get that information out as well.

22 I don't have any issues with how you have
23 been processing FOIAs. I think you guys have done a
24 great job. And I have appreciated the interactions I
25 have had with all of you folks. Now, the bar is high.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Also FOIA at Department of Energy and FOIA at the
2 State Department and I have actually learned more from
3 reading Hillary Clinton's emails than I have from
4 their FOIA responses.

5 So again, you know, I don't mean that to
6 be a backhanded compliment. I think you guys have
7 done a really good job. Thank you. Thank you.

8 FACILITATOR BURTON: Anybody want to
9 respond to that?

10 MS. GRAMIAN: As far as the Inspector
11 Generals are concerned, I will leave that to them,
12 because I don't know the NRC's IG work, but I know
13 from my own experience in the Inspector General's
14 Office all of OIGs maybe non -- you know, those that
15 are not part of the Intelligence Agency or part of
16 maybe, you know, nuclear, you know, agencies, they are
17 all on the web. All of their inspections, all of
18 their audit reports, all of their management reports
19 are on the website.

20 In fact, the IG Act requires within three
21 days after a report is issued that to be posted on the
22 web. That was for my Agency. I don't know again what
23 NRC does or what their issues are.

24 So as far as investigations are concerned,
25 those are investigations into individuals and that

1 implicates the criminal law. And people do have
2 privacy rights and that's why the investigative
3 reports in my former Agency were not put on the web,
4 unless there was public interest.

5 To give you an example, while I was at
6 DHS/OIG, there was a conviction of two Border Patrol
7 agents who happened to shoot a drug dealer and there
8 was unprecedented requests concerning that particular
9 investigation and conviction.

10 We went ahead and processed the records.
11 We posted it on the web. We had almost all both the
12 Senate and the House petition to release the two
13 agents that were imprisoned for shooting this "drug
14 dealer." So we felt that there was an extreme public
15 interest into the release of that information and
16 that's what we did.

17 But most investigative reports implicates
18 an individual that has been investigated under the
19 criminal law. Sometimes that investigation leads to
20 a conviction, sometimes it doesn't. Regardless, those
21 records are exempt and that's why Agency has to really
22 weigh and see if that information should be posted on
23 the web.

24 In my situation, we weighed it and it was
25 one of the reports that we posted on the web. But

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 again, I don't know what NRC's IG, you know, situation
2 is.

3 MR. RICCIO: (Off-mike remarks.)

4 MS. GRAMIAN: Okay.

5 MS. HIRSCH: Well, Lisa Clark from OGC had
6 to leave, but our regulations say the IG processes
7 their own requests for documents.

8 MS. MORGAN BUTLER: Um-hum.

9 MS. HIRSCH: And any -- the statute says
10 any frequently requested documents have to be posted
11 on the Agency's website. And DOJ has said that is
12 three or more requests. We have no control over them,
13 so -- and I haven't read, maybe you all have, the
14 Senate Bill that passed on the 16th. I know one
15 version of proposed legislation said -- had a
16 provision that any FOIA response would have to be
17 posted. It got rid of the frequently requested.

18 Did the Senate Bill do that? So I don't
19 know.

20 MR. ANDOH: And thank you, Jim, for
21 recognizing the good work that the FOIA Offices do.
22 Appreciate it.

23 FACILITATOR BURTON: Okay. We are going
24 to go to the phones now, but I think I want to
25 suggest, because we have less than 30 minutes left, if

1 you make a comment or have a question, please, be
2 brief, concise and to the point. And I'm going to ask
3 the responders to do the same. Okay.

4 So, Yomi, can you open up the phone lines
5 for folks if they have a comment or a question?

6 OPERATOR: Okay. Folks on the phone, if
7 you would like to ask a question, please, press *1,
8 at this time, and I'll refer the questions to the
9 queue. Again, there are no questions.

10 FACILITATOR BURTON: Okay. Thank you. We
11 will come back to folks in the room. Any other
12 comments or questions? Okay. We have one over here.
13 And, please, give us your name and affiliation.

14 MR. MIRANDA: My name is Sam Miranda. I
15 don't have an affiliation. Public, I guess, or maybe
16 IRS since I'm one of their better customers.

17 I was interested in the OGIS presentation.
18 I didn't even know it existed, but I did notice that
19 on one of the slides which conveyed information about
20 where you go in the various agencies and ask questions
21 and do your evaluations that perhaps you should look
22 at survey responses.

23 My experience with FOIAs is one, I just
24 put in the FOIA. I just got the reply. And along
25 with the reply came a link to a survey and I filled in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

(202) 234-4433

1 the survey and I expect other agencies may have such
2 surveys available and you might find some information
3 from the surveys that are not coming from the
4 agencies.

5 I would also suggest that you look at the
6 results. The OGIS seems to be process-oriented. And
7 the results, I think, are pretty important. There was
8 something published in the Wall Street Journal three
9 days ago which said that 77 percent of FOIA requests
10 either the responses were either not made or they were
11 highly censored, 77 percent.

12 And before Obama was elected, that number
13 was 65 percent.

14 And one of the agencies you mentioned, the
15 Customs and Border Protection --

16 OPERATOR: Push your speaker button, we
17 are unable to hear you.

18 MR. MIRANDA: I'm sorry. Can you hear me
19 now? Hello? So for the Border Protection, that
20 Agency couldn't find anything in 34 percent of cases.

21 And I would also suggest that in the case
22 of my FOIA request, it was a request for a specific IG
23 report results. I classified it by the author of the
24 report and the date. And what I got from the NRC was
25 a demand that I identify myself with two forms of

1 photo ID. I provided that. And what I got back as a
2 response was a report with every name redacted, every
3 one, including the author's name.

4 So I would suggest that when responding to
5 a request like that, suppose for example that it's a
6 sensitive report, you know, that involves a criminal
7 investigation that is going to be redacted anyway, the
8 requester should be informed of that before and then
9 before asking for ID. Okay.

10 If I had known that, for example, if I had
11 known that all I was going to get was a blank page,
12 maybe I would have withdrawn the request.

13 MS. MORGAN BUTLER: So we will get that
14 feedback to IG. We try to open communications and
15 share best practices, so we will provide that.

16 MS. GRAMIAN: One question I have is you
17 said that when you receive the response, there was a
18 link to a survey and which Agency is this? It's NRC?
19 And so NRC does have a survey at the end of it, okay,
20 this is great. Great. Thank you.

21 MR. ANDOH: Yes, I have actually read your
22 survey, so I know exactly what you are talking about.
23 But I'm -- and so for the benefit of everybody, I'm
24 going to keep this general.

25 When a FOIA requester makes a request for

1 documents, if you make a FOIA request for documents
2 that are going -- that you are probably mentioned in
3 or documents that are going to be pulled by your name,
4 we are required to verify that you are who you say you
5 are, otherwise, we don't provide them to you. We will
6 provide you the documents, but your name will be
7 redacted.

8 But generally speaking, and they can
9 probably can jump in here, when it comes to Agency
10 records, we have an obligation under the statute to
11 protect the privacy of individuals contained within
12 those responsive records, whether they are
13 investigative records or non-investigative records.
14 And there is actually a much lower burden when it
15 comes to protecting the privacy of individuals
16 mentioned in law enforcement documents.

17 Sometimes it often happens that the
18 parties to the events know who they are talking about,
19 right? But it doesn't -- for FOIA purposes it doesn't
20 matter. Those people have a right to their privacy in
21 law enforcement documents. They don't need to be
22 associated with an investigation and, therefore, we
23 have to redact their names, regardless of who is
24 asking for it.

25 So it's not like we decide that oh, we can

1 take it out here and give it to somebody else.
2 Regardless of who is asking for it, we are not going
3 to provide the names of people contained within Agency
4 documents if they are -- you know, especially if they
5 are investigative records.

6 MR. MIRANDA: Okay. Can I say something
7 here? I would suggest that the report that I got had
8 no names in it whatsoever.

9 MS. MORGAN BUTLER: An audit report.

10 MR. MIRANDA: So in that case, if you are
11 going to produce a response with no names in it
12 whatsoever, why not publish it on the website? Why do
13 you need to know who I am if that information isn't
14 there?

15 FACILITATOR BURTON: Okay.

16 MR. ANDOH: Let me take the second part of
17 your question. The NRC has different denial
18 authorities for three specific offices. So the Office
19 of the Secretary, OGC - Office of General Counsel, and
20 the Office of the Inspector General have denial
21 authority over their records. So when we receive a
22 FOIA request for documents that belong to the Office
23 of the Inspector General, they make the determination
24 as to what information can and cannot be released,
25 one.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So as a FOIA officer, I can chime in, but
2 ultimately, it's not my decision, because under our
3 regs, they have the authority to determine how much or
4 how little they want to release, that's number one.

5 Number two, they also determine what
6 documents can go into items and what documents cannot.
7 And right now, their policy is they shy away from
8 making those documents available in ADAMS.

9 And so the best that I can do is to say
10 that we are going to continue these discussions with
11 them and raise this issue with them, that this is an
12 issue of concern and that for them to probably rethink
13 their current policy, but that is what their policy is
14 right now.

15 FACILITATOR BURTON: Okay. Yeah, and I
16 think if there is any particular things for your case,
17 I think, you know, you and Roger can probably talk
18 separately.

19 I will try and take another question here
20 and then we will take another shot at the phones.
21 Anybody else have a comment or a question? I'm not
22 seeing anybody. Wait. Oh, okay. Okay.

23 MR. RICCIO: I'll take one more shot,
24 brief and to the point.

25 FACILITATOR BURTON: Brief, brief to the

1 point.

2 MR. RICCIO: Brief to the point. Once we
3 FOIA documents that should have been in the docket in
4 the first place, they are not placed in the docket,
5 they are placed in our FOIA request.

6 So for instance, the Confirmatory Action
7 Letter that requires Duke to fix the flooding problem
8 at Oconee. I still can't find that CAL if I go into
9 the ADAMS looking for the CAL. I can only find it if
10 I go in there and look at my FOIA or one of the
11 several other FOIA requests that were filed on that.
12 That's a regulatory document, that still has bearing
13 on what Duke is doing to this day or isn't doing to
14 this day down at Oconee. It should be back in the
15 docket, which -- where members of the public can
16 actually find it, rather than just being buried in a
17 several thousand page FOIA request to Jim Riccio at
18 Greenpeace.

19 FACILITATOR BURTON: Okay. Anybody?

20 MR. ANDOH: Well, the issue that, Jim, you
21 bring up here is also an issue that agencies have been
22 trying, at least the Department of Justice, to wrestle
23 with is metadata and making sure that documents are
24 tagged across agencies to make sure that when you put
25 a search item in Google, it pulls it wherever it is.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

(202) 234-4433

1 So one of the things that I have at least
2 talked about doing is getting with our DPC folks, who
3 post documents into ADAMS, and providing the
4 appropriate tags to the documents that we provide to
5 them to assist in addressing this kind of issue.

6 MS. GRAMIAN: And I think what I would
7 like to add is that the FOIA Advisory Committee is
8 looking at the proactive disclosure. And one of the
9 things that the Committee has, specifically the non-
10 Government Committee members, have now noticed is that
11 how hard it is to proactively post something on the
12 web because of the 508 compliance issues.

13 I don't know if you are familiar with the
14 508 compliance? It is a specific amendment to -- I
15 can't remember what it is. It's for disabilities and
16 people who are with disabilities must have access to
17 information that is posted on the web. It has to have
18 tagging. It has to have the remediation in order so
19 that the information can be read. If someone is
20 blind, that information can be read.

21 They don't really -- the members of the
22 public may not really understand how time-consuming
23 this process is. At OGIS we post all of our letters
24 to the requester minus their information, their names
25 and addresses and all that, on our website. But we

1 also remediate and all the letters are 508 compliant.

2 And it's a very tedious time-consuming
3 process. So for those agencies that have to post
4 their material on the web, they have to go through
5 this process, which takes a long time.

6 FACILITATOR BURTON: Very good. Let me go
7 to the phones real quick. Yomi, can you open it up
8 and see if anybody has a comment or a question?
9 Hello? Yomi, are you there? External operator, are
10 you with me? Okay. Well, we will have to see what is
11 going on there.

12 Until we figure that out, I guess we will
13 stay here. Any other comments or questions? Okay.
14 I have another one from Dave.

15 MR. LOCHBAUM: This is Dave Lochbaum at
16 the Union of Concerned Scientists.

17 Kim, you made a comment about the
18 discretionary delegation for releasing. But the next
19 slide dealt with consistency. And our concern about
20 that is that some office directors will agree that
21 this can be voluntarily released and the other office
22 director won't. So it will actually increase the
23 amount of inconsistency, if that's possible, it would
24 increase the amount of it.

25 So we have dealt with issues where

1 communication plans have been released in many cases,
2 but not in others. They have been fully redacted. So
3 allowing more and more of that inconsistency is not a
4 -- I know the intention is good, but the result will
5 just kill us.

6 MS. MORGAN BUTLER: Yes, because there is
7 a decision gate that is there whether it's appropriate
8 to release the information and it's a judgment call,
9 so I understand what you are saying. We did that to
10 increase transparency, but I understand your
11 consistency issue as well, so it's noted.

12 MR. LOCHBAUM: That's good. That's very
13 good.

14 MR. ANDOH: And also, Dave, with regard to
15 discretionary release, we start from the premise that
16 information is exempt from release, but we are using
17 our discretion to release it.

18 MS. MORGAN BUTLER: Yes.

19 MR. ANDOH: And the FOIA sometimes is not
20 black and white and reasonable minds can differ even
21 on the same document. And therefore, we could use our
22 discretion in one case to release more information and
23 in another case we might use our discretion and say we
24 shouldn't release as much.

25 Now, I'm not necessarily saying that's

1 what happened in this case, but the goal certainly is
2 to be -- it's to try as much to be consistent, at
3 least when we are dealing with the same kind of
4 information as to not to process it differently, but
5 also recognizing the fact that we could be providing
6 the same type of documents, but they -- depending upon
7 the interests and what is going on with particular
8 situations, the Agency, the officer might be much more
9 reluctant to use that discretion to release that in a
10 document in a particular case and not have the same
11 content in another.

12 Now, that doesn't necessarily mean they
13 are inconsistent, they are just using their discretion
14 differently, depending upon what the situation is.

15 MS. MORGAN BUTLER: Yes. And you know if
16 they ask us for our recommendation, we have probably
17 seen how it has happened across the Board and so we
18 can give them our recommendations to the path forward.
19 So that's -- we see that as a customer service aspect
20 to try to increase the consistency and we will keep
21 that in mind going forward.

22 MS. HIRSCH: I just want to add I know
23 Roger got twisted there because the presumption is
24 release and then you look to see if an exemption
25 prohibits that or allows you to exercise discretion to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 withhold that.

2 But I think the dam FOIAs, my name for
3 them, was they were prefect examples of this problem
4 of reasonable minds can differ on that subjective
5 judgment call as to whether something is so sensitive
6 that it needs to be withheld. And it took so long, as
7 you said, so much paper, so much time to try, so many
8 meetings to get to the bottom of where everybody could
9 at least live with it.

10 That, you know, I don't know that we are
11 ever going to be able to avoid that entirely. I think
12 the delegation to a senior FOIA official for the --
13 for each program office is more hopeful that actually
14 somebody with some time will actually look at the
15 documents. If there is questions, hopefully, they
16 will be raising those up the chain to get the program
17 office buy-in.

18 But when you have the office director as
19 the person who has got to make that decision, the
20 chances that they will actually look at the documents
21 with what can we release as their focus is really
22 slim. And you are not going to get away from
23 differing opinions even among office directors. So
24 hopefully with having lower level personnel on the
25 bureaucratic hierarchy, we will have more time to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

(202) 234-4433

1 actually look at the documents and say, you know, what
2 can we release here? Which is what we are trying to
3 focus on all of the time.

4 MR. PERKINS: My name is Richard Perkins.
5 I am an engineer with the Office of Research and I
6 believe in the United States that has a bright,
7 thriving and free future. And I believe that FOIA is
8 a critical part of that future. Thank you.

9 My question is about what training may be
10 provided to employees about FOIA. And my reason for
11 asking that is that my sense is that most people don't
12 understand it. And in your answer you talked about
13 what is required to release and that is sometimes
14 interpreted as or seen as what should we release?

15 And without an understanding of what the
16 law is, it's hard to know that you can have
17 consistency in the answer of what should be released.
18 And I believe that employees may mark the documents as
19 OVO believing that by marking those documents OVO that
20 they can then circumvent the release of those
21 documents under FOIA requests, that of course is not
22 true.

23 But this kind of misunderstanding about
24 how the process works can lead to a large amount of
25 wasted time and effort and in a worst case actually be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 successful in preventing the release of information to
2 the public which it has a right to know.

3 So my question is you mentioned that
4 training will be provided to FOIA coordinators, but
5 what about the larger Agency employees, since --

6 MS. MORGAN BUTLER: Well --

7 MR. PERKINS: -- that has an effect.

8 MS. MORGAN BUTLER: Yes, thank you. We
9 have had a town hall meeting on FOIA.

10 MS. HIRSCH: We have had since the last
11 public -- the first public meeting, the last public
12 meeting, we had a town hall open to everybody. We had
13 Melanie Pustay from DOJ come and give all employee
14 FOIA training and we had another town hall in '15. So
15 we are -- and we have given specific training to
16 offices with specific types of documents, i.e., OI,
17 OE, just to be able to help all of the staff.

18 And one of my hopes is that we will have
19 some -- when we get everybody electronified to
20 electronically process everything, we will have time
21 to give specific office training to everyone. But the
22 general training we have had is available in iLearn.

23 MS. MORGAN BUTLER: Yes, the DOJ training
24 is available in iLearn.

25 MS. HIRSCH: And the DOJ training --

1 MS. MORGAN BUTLER: Yes, um-hum.

2 MS. HIRSCH: modules are available on
3 iLearn.

4 MR. ANDOH: But just really quickly, one,
5 we are providing FOIA training to specific offices
6 when the FOIA coordinators ask us to come and visit.
7 We are also going to ensure that we have Agency-wide
8 FOIA training specifically on the issue of
9 intersection between internal document markings in the
10 FOIA to disabuse this notion that somehow if an
11 internal document, a marking on a document precludes
12 it from being released under the FOIA. And that not
13 necessarily true.

14 FACILITATOR BURTON: Good. Okay. We have
15 just a few more minutes. We may go a little bit over
16 time, but I wanted to give folks on the phone another
17 opportunity if anybody wanted to ask a question or
18 provide a comment.

19 Yomi, are you there now?

20 OPERATOR: I am. Again, participants, if
21 you would like to ask a question, please, press *1.
22 One moment to see if we have any questions. Excuse
23 me; we have one question from Latischa Hanson. You
24 may begin.

25 FACILITATOR BURTON: Okay.

1 MS. HANSON: This is more of a comment
2 probably for the last, I want to say, 20 minute
3 discussion. We didn't hear any of that or very little
4 at all, those of us on the conference line. And I am
5 in Region IV in Arlington, Texas.

6 FACILITATOR BURTON: Okay. I apologize
7 for that. We will have to talk to our audio/video
8 people.

9 MS. HIRSCH: And we will have a transcript
10 available.

11 FACILITATOR BURTON: And we are going to
12 have a transcript, so you will be able to catch
13 whatever you missed. I apologize for that.

14 Anybody else on the line that has a
15 comment or question different from hers? Okay.
16 Hearing nothing, one more shot. Folks in the room, a
17 comment or question?

18 Okay. Actually, I will take the
19 opportunity to ask a question myself. This is for
20 Nikki.

21 OPERATOR: Okay. Again, speakers, we are
22 unable to hear you. Could you, please, come closer to
23 the mike?

24 FACILITATOR BURTON: Oh, okay. Sorry.
25 Just wanted to know if anybody else had a comment or

1 question on the phone. Can you hear that?

2 OPERATOR: No other questions.

3 FACILITATOR BURTON: Okay. You mentioned
4 that you do Agency assessments. How do you decide
5 which agencies you are going to assess and can an
6 agent -- I think you kind of mentioned this, but an
7 Agency can ask you to -- for an assessment, right?
8 Can you talk more about that?

9 MS. GRAMIAN: Absolutely. Currently, what
10 we are doing is you can -- just having -- doing an
11 assessment by agencies that already asked us to do
12 one. But what we have also done is we have created a
13 self-assessment question here that we launched to all
14 agencies, not all, I think about 60 agencies that do
15 most of the FOIA responses.

16 And in -- the self-assessment, basically,
17 allows management to identify areas that needs, you
18 know, improvement. Once we -- I think the
19 questionnaire will close end of March and once we
20 compile and identify Government trends and other
21 issues, we may also be able to see if we can use the
22 self-assessments to identify agencies that are, you
23 know, ready to be reviewed.

24 But as of now, we are assessing agencies
25 that have asked us to do assessment.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 FACILITATOR BURTON: Okay. Thank you.
2 Okay. It doesn't look like we have any more comments
3 or questions. I think we are at the point where we
4 are ready to start closing out the meeting.

5 Before I -- before we close, first of all,
6 I want to thank everybody for coming. I want to thank
7 Charles, our transcriber, as well as Yomi, our
8 external operator.

9 I want to remind you to, please, complete
10 the evaluation forms, although I know I think some
11 comments that we are going to get. We do want your
12 feedback and we do appreciate it. And we do want to
13 use it to try and improve future meetings.

14 So with that, I will ask Ms. Morgan Butler
15 to close us out. Kim?

16 MS. MORGAN BUTLER: I just wanted to
17 repeat the thank-you for everyone's participation
18 today, both the requesters, you have given us an
19 opportunity to hear directly from you and to get some
20 of the feedback on how our program is operating and
21 also to the staff that works on FOIA every day, to our
22 officers and our staff within my branch and the staff
23 across the Agency.

24 I also see that we have staff from the
25 Chairman's Office and Commissioner Baran's Office, so

1 I thank you for your interest in the topic. And for
2 Mike Johnson's participation, I think it demonstrates
3 that he has an interest in our responsiveness to FOIA
4 requests.

5 And also Fred Brown and Pat Hirsch, who
6 are within our office, the FOIA Team, and who provides
7 us a wealth of support on FOIA.

8 Do you have any comments, Pat?

9 MS. HIRSCH: No.

10 MS. MORGAN BUTLER: Roger?

11 MR. ANDOH: No.

12 MS. MORGAN BUTLER: Okay. Thank you.

13 (Whereupon, the above-entitled Public
14 Meeting was concluded at 3:01 p.m.)

15

16

17

18

19

20

21

22

23

24

25