

Office of Government Information Services

BUILDING A BRIDGE

*Between FOIA Requesters and
Federal Agencies*

MARCH 2012





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MESSAGE *from* *the* DIRECTOR

I am pleased to present the second report of the Office of Government Information Services (OGIS). Congress created OGIS more than four years ago, calling us the Freedom of Information Act (FOIA) Ombudsman. We have directly helped more than 1,200 FOIA requesters from 13 countries and all but two states since opening two years ago; we have helped countless others through our public outreach efforts. Despite our broad reach, many are still learning about us and our important statutory mission.

Our statutory directive is to offer a range of mediation services to resolve FOIA disputes and to review agencies' FOIA policies, procedures, and compliance. We do that by serving as a neutral party within the Federal Government to which anyone can come for assistance with any aspect of the FOIA process.

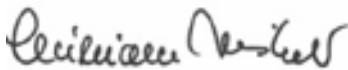
We have observed through hundreds of cases the importance of good customer service in resolving—and preventing—disputes. Many FOIA professionals, despite facing considerable obstacles, offer excellent customer service, often by simply communicating with requesters and with their own agency colleagues who hold the Federal records sought in FOIA requests. That work embodies what President Obama called “competent, efficient, and responsive service from the Federal Government” in his April 2011 Executive Order on customer service, [E.O. 13571](#), calling on Federal agencies to better serve the public by streamlining and making more efficient their service delivery.

We fully support this goal, particularly as it relates to FOIA, which by its very nature involves frequent interaction with the public seeking access to Federal records. Many of OGIS's best practices,

collected from [Chief FOIA Officer Reports](#) submitted annually to the Department of Justice and from OGIS's own observations in facilitating resolutions to disputes, relate to customer service. Responding quickly to requester telephone calls and e-mails seeking the status of requests, creating electronic calendar reminders for response due dates, and meeting regularly with requesters, particularly those with complex requests pending, are just some of the customer service best practices we have observed.

Customer service is a thread we at OGIS weave into our daily work. Whether it's working with agencies and requesters to resolve FOIA disputes, training FOIA professionals Government-wide in dispute-resolution skills, reaching out to agencies and requesters in non-case-related matters, or providing our customers—agencies and requesters—with a [user-friendly web site](#), we aim to serve as a model for good customer service. [Let us know](#) how we're doing.

Sincerely,

A handwritten signature in black ink, appearing to read "Miriam Nisbet". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

Miriam Nisbet, Director

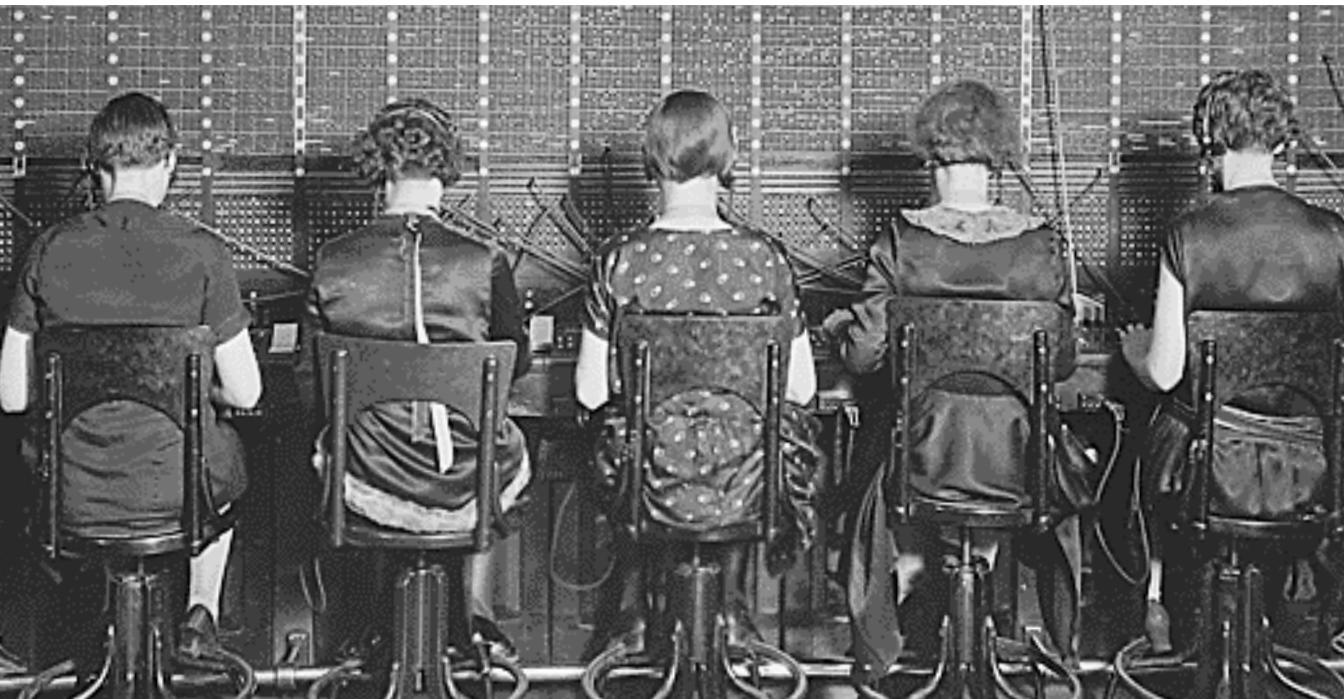
Office of Government Information Services (OGIS)

EXECUTIVE SUMMARY

In OGIS's second year as FOIA Ombudsman, the Office continued building on the strong foundation established in its first year by

- Providing mediation services to requesters and agencies
- Revamping and more regularly offering dispute-resolution skills training
- Connecting with both agency and requester communities
- Commenting on proposed changes to department and agency FOIA regulations
- Launching a permanent case management system, [web site](#), and [blog](#).

OGIS opened 764 cases in response to requests for assistance in the two years ending September 30, 2011. Of the 373 cases opened in Fiscal



Year 2011, three-quarters did not rise to the level of an actual dispute; of the 66 FY 2011 cases OGIS identified as involving a true dispute, OGIS facilitated a resolution in two-thirds of them. OGIS defines true disputes as those cases in which the requester and the agency disagree about FOIA policies, procedures, or compliance with FOIA or are at a communications impasse that goes beyond how to file a FOIA request, the status of a request, and the like.

OGIS expanded the audience and the frequency of its dispute-resolution skills training program in FY 2011. Based on feedback received the previous year from training sessions with FOIA Public Liaisons, who have a statutory role to assist in resolving disputes, the course's revamped curriculum focuses on providing good customer service, the importance of communication, and working with all the right players within an agency in the FOIA process. The interagency course, offered six times a year, reaches far more FOIA professionals than in its first year.

An early step in OGIS's review of agency FOIA policies, procedures and compliance involved commenting on proposed changes to department and agency FOIA regulations, both by submitting public comments through the National Archives and Records Administration (NARA) and by working collaboratively with agencies before the public comment period.

Finally, OGIS spent FY 2011 preparing a new web site and permanent case management system, launched at the beginning of FY 2012. The new system allows customers to request assistance online and track their OGIS cases while helping OGIS staffers better manage their caseloads. OGIS's blog, [The FOIA Ombudsman: Information and Advice](#), launched in March 2011, is designed to stimulate conversation about all things FOIA.

Much work remains. In its third year, OGIS is working toward establishing a fully operational mediation program and advancing its review of agency FOIA policies, procedures, and compliance.



FOIA MATTERS

FOIA nurtures our democracy through transparency and accountability, helping countless people each year learn about some aspect of their government. Federal departments and agencies received nearly 600,000 FOIA requests in the year ending September 30, 2010. Though journalists are not the most frequent users of the law, their work brings the most public exposure to FOIA. From stories revealing injuries caused by shattering bakeware and a 1970s FBI investigation of New York Yankees owner George Steinbrenner to racial inequality of Presidential pardons and \$1.2 trillion in public money quietly loaned to big banks and brokerage firms during the economic downturn, FOIA played a role. Some examples:

ProPublica and the *Washington Post* reported in December 2011 that whites are nearly four times as likely as minorities to receive Presidential pardons, even when the types of crime and severity of sentences are taken into account. [ProPublica](#) obtained documents through FOIA from the Office of the Pardon Attorney naming individuals denied pardons; the independent nonprofit newsroom also used documents obtained through FOIA by [Professor P. S. Ruckman, Jr.](#), of Rock Valley College in Rockford, IL.

Consumer Reports magazine used FOIA to obtain complaints filed with the Consumer Products Safety Commission (CPSC) about glass bakeware unexpectedly shattering. As a result of a year-long investigation, the magazine [reported](#) in January 2011 that the bakeware shattered in the oven, on the countertop, or while being held, sometimes causing injuries by flying shards of hot glass. (Members of the public no longer have to file FOIA requests to get such information; safety incident reports about all products regulated by the CPSC are now available in a database available at [SaferProducts.gov](#). That is just one example of many in which agencies proactively disclose information.)

BEST PRACTICES: Search

FOIA analysts task record holders to search for requested documents, a process that several agencies aim to streamline with forms to help with searches.

The Office of Management and Budget uses a FOIA Search Checklist that lists offices where responsive records may be found. The checklist doubles as a quality-control tool to ensure responses have been received from all offices that are expected to have responsive records.

The Surface Transportation Board added language to its search form that reminds offices that although records could be covered under an exemption, a foreseeable harm analysis should be performed even if the satellite office thinks that a record should not be released.

The Commodities Futures Trading Commission requires FOIA professionals to sign a “FOIA Response Form,” a certification of their search and review.

FOIA helped the *New York Times* obtain contract documents from the U.S. Department of Agriculture (USDA) that contributed to a [November 2010 story](#) describing how Dairy Management, a USDA marketing arm, spent \$12 million on a marketing campaign promoting a cheesier Domino’s pizza while other USDA offices discouraged Americans from eating too much cheese.

The Center for Public Integrity and NPR used FOIA to obtain from the Environmental Protection Agency a once-confidential list of serious or chronic violators of the Clean Air Act, which the media outlets [reported](#) on in November 2011.

Joseph D. West, a Washington, DC, lawyer with the firm Gibson Dunn & Crutcher, used FOIA to obtain a contract between the National Park Service and Tourmobile, which for 40 years held the Park Service's contract for guided tours of the National Mall. The contract indicated that for the last three years, the Park Service extended the contract without competitive bidding required by law, *Washington City Paper* [reported](#) in July 2011. The Park Service responded by revamping its contracting process.

Bloomberg News reported in August 2011 that the Federal Reserve loaned banks and other financial companies as much as \$1.2 trillion in public money before, during, and after the 2008 financial crisis, about the same amount owed at the time by U.S. homeowners on 6.5 million delinquent and foreclosed mortgages. Data gleaned from 29,346 pages of documents obtained under FOIA contributed to [Bloomberg's investigation](#), which also revealed that nearly \$300 billion went to Morgan Stanley, Citigroup, and Bank of America.

The Associated Press [reported](#) in December 2010 that former FBI Director Clarence M. Kelley, in response to an inquiry from Watergate special prosecutor Archibald Cox, ordered an investigation in 1973 into George Steinbrenner and his Cleveland-based American Ship Building Co. for illegal campaign contributions. AP found the revelation in 400 pages of Steinbrenner's FBI files released under FOIA after his death.



CUSTOMER SERVICE: RESOLVING DISPUTES

“The Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under this section and administrative agencies as a non-exclusive alternative to litigation, and, at the discretion of the Office, may issue advisory opinions if mediation has not resolved the dispute.”

The Freedom of Information Act

5 U.S.C § 552(h)(3)

More than 1,200 FOIA requesters from nearly every state and points around globe turned to OGIS for assistance in its first two years as FOIA Ombudsman. Requests for help ranged from questions about how to file a FOIA request and how to appeal an agency

CASE STUDY

Douglas J. Gillison, then-executive editor of the English-language *Cambodia Daily*, requested OGIS assistance in March 2011, after delays in processing his FOIA requests and appeals to the FBI and State Department. In addition to a 19-month wait for a State Department response, Mr. Gillison had received conflicting information about the FOIA referral process.

Mr. Gillison sought access to records pertaining to a March 30, 1997, hand grenade attack in Phnom Penh, Cambodia, that injured American pro-democracy activist Ron Abney; corruption allegations at a U.S.-funded Cambodian tribunal; and the vetting of Cambodian military units for human rights violators.

OGIS communicated with both agencies' FOIA public liaisons about the status of the requests, appeals, and referrals. OGIS learned and shared with the requester details about the processing of his requests and appeal, including:

- In cases of rolling releases, the FBI gives requesters appeal rights with each interim release; however, the agency does not begin further processing until the appeal authority, the Office of Information Policy (OIP), issues final agency determinations for all portions of the request. That allows requesters to preserve their rights while allowing the FBI to conduct further searches in a holistic rather than piecemeal fashion.
- More than 100 documents referred by the FBI to the State Department were in the final stages of the first of a two-tier review process at State, and a case number had been assigned to allow tracking.
- The State Department was in the midst of conducting an adequacy of search analysis for a request for which Mr. Gillison had received documents for a five-month period, rather than the requested five-year period.

Mr. Gillison did not receive all the information he sought, nor did he receive documents as soon as he would have liked, but OGIS's involvement helped ensure that the FOIA process worked for both the requester and the agencies.

"Many thanks again for your help," he wrote OGIS in June 2011. "You guys really cut through the morass of our FOIA searches."



release determination to more difficult inquiries about resolving disputes pertaining to specific exemption use or agency FOIA policy.

OGIS opened 764 cases in response to those requests for assistance—391 in its first year and 373 in its second year, ending September 30, 2011. Between June 2010, when OGIS began tracking telephone and e-mail quick assists, and the end of FY 2011, the Office helped nearly 500 callers and e-mailers.

OGIS's work has reached customers from 48 states, the District of Columbia, the Northern Mariana Islands, Puerto Rico, and 13 foreign countries, including Australia, Cambodia, Canada, France, India, Iraq, and Mexico. Individuals, including veterans, researchers, professors, journalists, attorneys, and inmates, comprised more than three-quarters of OGIS's FY 2011 caseload.

On the agency side, OGIS cases in FY 2011 involved 42 Federal agencies, including all 15 cabinet-level departments. About half of OGIS cases came from five cabinet-level departments:

- 94 cases (25 percent) from the Department of Justice
- 42 cases (12 percent) from the Department of Homeland Security
- 24 cases (about 7 percent) from the Department of Veterans Affairs
- 28 cases (about 7 percent) from the Department of Defense
- 13 cases (about 3 percent) from the Department of Health and Human Services

These numbers do not imply that those agencies have more problematic FOIA operations than other agencies; rather, those agencies

BEST PRACTICES: Exemption Use and Disclosure

Attorney General Eric Holder, in his March 2009 memorandum on FOIA, strongly encouraged agencies to make discretionary disclosures of information and instructed agency FOIA personnel not to withhold information merely because, as a technical matter, the records fall within the scope of a FOIA exemption. Some examples of discretionary disclosures:

The U.S. Export-Import Bank cut its use of Exemption 5 in half between FY 2008 and FY 2010 by releasing more pieces of e-mail threads and other records that previously were withheld under deliberative process and attorney-client privileges.

Department of Homeland Security component offices must certify that a foreseeable harm review and analysis has been completed for any withheld information.

The Equal Employment Opportunity Commission discloses factual portions of its investigative memorandums; previous guidance directed withholding such information.

When a private party contracts with the Treasury Department's Office of Financial Stability, it must provide proposed redactions that the agency can use as a starting point if it receives a future FOIA request for that contract.

regularly refer requesters to OGIS. Many offices still do not know about OGIS and the services it offers.

OGIS exists for both requesters and agencies, and in FY 2011, the Office saw an increase in the number of agencies coming to the FOIA Ombudsman for assistance. Four cabinet-level departments and a handful of smaller agencies sought OGIS assistance on a range of issues, from dealing with repeat requesters to working with program offices within the same agency to locate responsive records.

A majority of OGIS cases—56 percent—involved delays and denials in FY 2011. Delays ranged from instances in which requesters

CASE STUDY

Requester Scott Hodes contacted OGIS in July 2010 about five FOIA requests he had pending at the Centers for Medicare and Medicaid Services (CMS), some dating back to 2005. Mr. Hodes had heard little from the agency about the status of his requests apart from a call asking if he was still interested in receiving the records.

OGIS contacted CMS and learned that a major effort to clear its backlog, which included creating a Backlog Strike Force, sparked the “still interested” call. While such calls can be useful, the Department of Justice Office of Information Policy encourages agencies to [think carefully about making them](#)—requesters report that they can cause ill will toward an agency, since they may have taken an agency’s silence as a sign that it is working on a request. OGIS told CMS that Mr. Hodes was indeed still interested in receiving the records. Though it took some time, CMS fulfilled Mr. Hodes’s FOIA requests.

While CMS’s delay in processing Mr. Hodes’s requests is regrettable, the agency’s FOIA staff used several FOIA best practices to complete his requests. CMS FOIA staff communicated with OGIS throughout the process, informing the Office about which requests they were working on, the status of those requests, and when they might be completed. Since some of the records Mr. Hodes requested required pre-disclosure notification—notifying nongovernmental entities that were the source of the records and waiting for their reply—the status updates were particularly helpful. When it could, CMS also made interim releases, and once offered to resend records when it was unclear whether Mr. Hodes had received them.

wondered why agencies have not responded in 20 working days to cases in which delays lingered for months or years.

OGIS denial cases in FY 2011 involved eight of the nine exemptions to FOIA. (OGIS has not handled any cases involving Exemption 9, the least-cited exemption, which protects “geological and geophysical data, including maps, concerning wells.”)

The most often invoked exemptions in OGIS cases are Exemptions 6 and 7, which protect personnel, medical, and similar files, the release

of which could invade personal privacy, and records and information compiled for law enforcement purposes, respectively. A vast majority of these cases involve requesters seeking information on third parties. Both FOIA and the Privacy Act prohibit the Government, as a general rule, from releasing information about a third party without his or her written consent or proof of his/her death, or without a showing of an overriding public interest in disclosure of the information.

OGIS saw about a dozen cases in FY 2011 involving Exemption 3, which covers nondisclosure provisions in other Federal statutes. Agencies invoked [150 such statutes](#) in the year ending September 30, 2010, according to the Department of Justice (DOJ). OGIS cases involved at least seven of those laws, including

- Rule 6(e) of the Federal Rules of Criminal Procedure, which protects from disclosure Federal grand jury information (Fed.R. Crim. P. 6(e))
- the Postal Reorganization Act, which protects from disclosure certain postal information including the names or addresses of postal patrons and information prepared for use in collective bargaining agreement negotiations (39 U.S.C. § 410(c))
- the National Security Act of 1947, which protects from disclosure records pertaining to intelligence sources and methods (50 U.S.C. § 403-1).

Although OGIS has no investigatory or enforcement power and cannot compel an agency to release documents, the Office successfully facilitated resolutions in two-thirds of the cases involving a true dispute in FY 2011. The majority of OGIS cases—more than three-quarters—did not rise to the level of actual disputes between FOIA requesters and Federal agencies. In the 66 cases that OGIS identified as involving true disputes in FY 2011, two-thirds resulted in the disputing parties agreeing to an outcome. OGIS's definition of success in such cases is that both the requester and the agency can endorse the outcome even if neither party's position is entirely fulfilled.

In one-third of the cases that OGIS identified as disputes, the Office failed to facilitate resolutions. In several cases, agencies reviewed their final decisions, and OGIS determined that the cases were not successful candidates for formal mediation because case law and current FOIA policies clearly supported the agency position, which did not satisfy the requesters. In one case, for example, the agency stood by its claimed exemption as proper and necessary to protect the business interests of a private company that employs contractors, a position OGIS noted is supported by case law; the customer remained dissatisfied. In another case involving the denial of records containing classified information, OGIS could not directly assist and instead referred the requester to the [Public Interest Declassification Review Board](#) at the National Archives; the requester was dissatisfied with the referral.

During OGIS's first two years, no cases resulted in formal mediation, and the Office issued no advisory opinions. Several cases were ripe for

CASE STUDY

OGIS received several cases in FY 2011 regarding requests in which final closing letters from components of the Department of Homeland Security (DHS) referred vaguely to records found in searches and referrals to another agency or agencies. Although there are legal reasons why an agency might not name another agency to which records were referred, OGIS learned that a question remained about whether the use of so-called "blind referrals" was done as a rule instead of an exception, leaving requesters feeling as if their requests had disappeared into a black hole.

After OGIS brought the concern to the attention of DHS, the agency suggested that in cases of "blind referrals," it would more fully explain to requesters the nature of why the agency could not be named and would provide contact information so requesters could learn the status of the referral to the other agency or component. To date, OGIS has not been asked again to assist with this issue.



mediation, but in those cases, both parties could not agree on entering into that process. OGIS stands ready to provide formal mediation: All of OGIS's professionals are trained in these services. OGIS's facilitators became certified in Federal workplace mediation in FY 2011 by [Northern Virginia Mediation Service](#), an affiliate of George Mason University School of Conflict Analysis and Resolution; OGIS also maintains a pool of trained outside mediators should the need arise.

During FY 2011, OGIS worked to refine its internal processes and measure its effectiveness by partnering with the [Harvard Negotiation and Mediation Clinical Program](#), which offered its expertise and services at no cost to OGIS. The clinic, part of the teaching program at Harvard Law School, continued working into FY 2012 on developing methods for evaluating and improving OGIS's effectiveness in dispute resolution and stakeholder satisfaction.

OGIS, created to complement existing FOIA practice and procedure, strives to work in conjunction with the existing request and appeal process. OGIS's preference is to allow the requester, whenever practi-

BEST PRACTICES: Records and Records Management

Agency FOIA programs are improved considerably by thoughtful records management practices. The Securities and Exchange Commission reorganized its FOIA program to include records management services. The result: faster responses to FOIA requests.

While FOIA does not require agencies to create new records in response to a request, the Surface Transportation Board endeavors to deliver the information sought by a requester—even when it is not compiled in a record—when it is reasonably possible and could save time or money. For example, a requester asked for a list of all Senior Executive Service employees. While such a list did not exist, the agency created and released it since the alternative was to review, redact, and release a number of different records containing the same information.

cal, to exhaust his or her remedies within the agency, including the appeal process. However, requesters are welcome to come to OGIS at any point in the process. While 20 percent of OGIS customers sought the Office's assistance in FY 2011 after an agency's final determination on appeal, many came to OGIS with questions earlier in the process: after filing a request (26 percent); after receiving an initial response (9 percent); or before receiving a response to an appeal (10 percent). And 5 percent came to OGIS before even filing a FOIA request.

OGIS cases were open an average of 50 working days in FY 2011 with a median of 31 working days. Sixteen cases were closed within one week, while one case stayed open 297 working days. The latter case involved a long-standing agency practice. OGIS worked with the agency and the requester, facilitating communication until both sides reached a compromise they found acceptable—an example of neither party's position being fully satisfied, but both endorsing the outcome.

Despite the Office's progress, some agencies do not cooperate with OGIS even though FOIA expressly requires FOIA Public Liaisons to

assist in resolving disputes (5 U.S.C. § 552(a)(6)(B)(ii) and (l)). And some requesters see OGIS as ineffective.

Fifty cases in FY 2011 involved the Privacy Act, or first-party requests, which fall outside the scope of OGIS's mission. That was a drop from 97 cases in OGIS's first year. The Office originally told Privacy Act requesters that it could do little to help them. However, as requesters who are confused about the intersection of FOIA and the Privacy Act continued to come to OGIS, the Office realized in FY 2011 that it could offer ombuds services to individuals requesting their own records, including providing requesters with information about the process and the status of requests. OGIS informs these requesters that it does not have a statutory role in reviewing policies, procedures, and compliance with the Privacy Act as the Office does with FOIA.

CUSTOMER SERVICE: OGIS TRAINING

Training FOIA professionals in dispute-resolution skills is an OGIS priority. Goals in providing this training are

- To recognize and support the statutory role of FOIA Public Liaisons to help resolve disputes between requesters and agencies
- To replicate OGIS's success in resolving FOIA disputes in agencies Government-wide
- To educate FOIA professionals about the OGIS process
- To prepare key agency FOIA professionals to better work with OGIS in resolving FOIA disputes.

In its first year, OGIS collaborated with Alternative Dispute Resolution (ADR) professionals from several agencies to create a successful training program for FOIA Public Liaisons, co-sponsored by the DOJ's [Office of Information Policy](#) (OIP). In its second year, OGIS increased the frequency of the program's offering to six times a year and expanded the training audience. Although there are other venues

BEST PRACTICES: Training and Personnel

Large, geographically dispersed agencies can face hurdles communicating with employees. Several such agencies developed online FOIA training programs to keep employees informed on the statute's requirements and current FOIA policies. The Small Business Administration (SBA), which has a regional office in every state, created such a program. The Department of Agriculture's Forest Service posted on its web site a training video for its FOIA officers, who are located at sites across the country. And the Department of Health and Human Services' Agency for Healthcare Research and Quality created a FOIA training video for project and contracting officers to explain their important role in the FOIA process.

Every Federal employee has a responsibility under FOIA; training all agency staff in FOIA basics is an OGIS best practice. The Department of Veterans Affairs ensures that all new employees are familiar with FOIA by including information about it in their orientation packets. SBA requires that all employees complete its online training program; it even recorded a session for senior management that is posted on the agency's internal training web site. The Forest Service also is working toward training all employees about FOIA.

The U.S. Agency for International Development included its Chief FOIA Officer and senior program professionals in FOIA training.

through which FOIA professionals may pay to be trained in alternative dispute-resolution skills, OGIS offers this training free of charge, and it is unique and innovative in providing it in the FOIA context.

The early training program, developed in collaboration with ADR professionals from the Federal Energy Regulatory Commission and the Air Force, provided an excellent foundation in dispute resolution and mediation. However, OGIS concluded that the focus on formal mediation was too narrow, and with the help of Jean Whyte, director of [RESOLVE](#), the National Archives' Alternative Dispute Resolution (ADR) program, reworked the training to focus instead on the forms



of dispute resolution that it uses most often, facilitation and ombuds services. The training now focuses on techniques to improve customer service and communication, including working with agency colleagues on FOIA matters and using a five-step process to resolve disputes. It is much more likely that agency FOIA staff will be asked to work with OGIS to resolve disputes through these informal methods than through formal mediation. The training also provides FOIA professionals with skills they can use daily to prevent and resolve disputes; disputes within agencies—such as those involving communications between FOIA processors and program managers—are often every bit as contentious and difficult as those with requesters.

OGIS originally limited enrollment in this training to FOIA Public Liaisons, who have the statutory responsibility to help resolve disputes (5 U.S.C. § 552(a)(6)(B)(ii) and (l)). Although OGIS still gives priority enrollment to FOIA Public Liaisons, the Office now welcomes into its training program FOIA analysts, appeals officers, managers, attorneys, and others involved in the FOIA process.

Expanding the audience for the training program increased the demand, with each session filling up within hours of its announcement.

OGIS presented five “Dispute Resolution Skills Training for FOIA Professionals” sessions in FY 2011, including two hosted by the [American Society for Access Professionals](#) (ASAP) as part of its training curriculum. The Departments of Health and Human Services, and Transportation also incorporated OGIS training into their FOIA training. OGIS continues to offer [inter- and intra-agency training](#) in conjunction with OIP.

OGIS also began offering agency-specific dispute resolution skills training, working closely with individual agencies to design and develop a half- or full-day training program that includes role-play exercises involving frequently encountered FOIA disputes. This individualized approach takes significantly more planning and preparation time than OGIS’s cross-agency approach; for this reason, its realization has been slow. OGIS delivered full-day, agency-specific training to the U.S. Citizenship and Immigration Services and the Department of the Interior, the first such offerings by OGIS on a department-wide basis, in calendar year 2011.

OGIS plans to build on the success of the current training program while exploring new avenues for providing dispute-resolution skills training, including

Distance training: OGIS has had several requests for training from FOIA professionals outside the Washington, DC, area who cannot attend either OGIS or ASAP training conferences. The Office plans to explore technologically feasible, affordable ways to deliver training—or parts of it—online.

Training for FOIA requesters: OGIS recognizes that FOIA requesters also could benefit from training in the FOIA process. The Office met with representatives of the FOIA requester community to brainstorm what such training might look like, and is considering creating short videos about the FOIA process, pending funding.

Expanded agency-specific training: Though this part of OGIS's training program is still in its infancy, OGIS has improved its ability to plan and develop training that is more meaningful to a specific agency. In FY 2012, OGIS plans to offer dispute-resolution skills training sessions to FOIA professionals at the Departments of Agriculture, Homeland Security, the Interior, and State.

CUSTOMER SERVICE: OUTREACH

OGIS has engaged in substantial outreach to the FOIA community since opening in September 2009, taking a variety of approaches to discuss the Office and its work. It has

- Participated in meetings of, presented to, and conducted training with Federal FOIA and Alternate Dispute Resolution (ADR) professionals
- Organized and participated in meetings of and presented to non-government stakeholders and the public
- Built an online presence through the OGIS [web site](#) and [blog](#) to communicate and interact with stakeholders.

Federal Government Professionals

OGIS constantly communicates with individual Federal FOIA professionals, working together to resolve FOIA disputes, providing assistance through ombuds services such as answering questions or sharing information, and reviewing agencies' FOIA policies, procedures, and compliance. To reach a broader swath of FOIA professionals, OGIS presents sessions at Government-wide FOIA training sessions and also visits the FOIA staff at individual departments and agencies. In FY 2011, OGIS staff met with FOIA professionals from numerous agencies, including the following:

- Central Intelligence Agency
- Department of Agriculture

- Department of Commerce
- Department of Health and Human Services
- Department of Homeland Security
- Department of Housing and Urban Development
- Department of the Interior
- Environmental Protection Agency
- Federal Deposit Insurance Corporation
- Securities and Exchange Commission

OGIS also presented to Government employees at

- [American Society of Access Professionals](#) conferences and symposia
- [Coalition of Federal Ombudsman](#) annual conference
- Federal Privacy Summit

Director Miriam Nisbet, through her membership in the [Administrative Conference of the United States](#) and the [American Bar Association](#), also worked with Government and nongovernmental professionals in their shared goal of improving the administrative process. These meetings and events are opportunities for OGIS to ensure that executive branch agencies and their FOIA staffs know about the Office's mission and the services it provides to agencies. Many agencies have come to OGIS for dispute resolution or ombuds assistance or for OGIS review of draft regulations, and are collaborating with the Office on dispute-resolution and prevention techniques and training.

OGIS also continued its outreach efforts to the ADR staffs at agencies, encouraging them to apply their dispute-resolution expertise to their own agencies' FOIA matters. FOIA and ADR staffs at the Departments of Health and Human Services, and Transportation conducted joint FOIA dispute-resolution training this year with OGIS participation. They received positive feedback and requests for additional

sessions. OGIS also has continued to connect agency FOIA and ADR professionals to find ways to work together internally. Director Nisbet began chairing the Government-wide [Interagency ADR Working Group Steering Committee](#) in FY 2011 and will continue encouraging a bridge between ADR and FOIA within agencies.

Nongovernment Entities

Private-sector members of the FOIA community, including public-interest groups, watchdog organizations, and members of the general public, comprise the other major audience of OGIS's outreach efforts. Some of these groups and individuals provide support and feedback on OGIS's operations; others are OGIS customers. OGIS attends meetings, conferences, and events where these members of the FOIA community are present, and tries to ensure that they know about OGIS's services. In FY 2011, OGIS met or partnered with nongovernment entities at

- American Bar Association, annual meeting and [Communications Law Forum](#)
- [Brookings Institution](#), Workshop on Evaluating Open Government
- [Electronic Privacy Information Center](#)'s executive board
- [International Conference of Information Commissioners](#)
- [Investigative Reporters and Editors](#) annual conference
- [Media Access to Government Information Conference](#) (MAGIC) through the National Archives, Duke University & Federal Communications Commission
- [National Press Foundation](#)
- [NPR](#), staff training
- [Society of Professional Journalists](#) Excellence in Journalism annual meeting
- [Sunshine Week](#) events, including American University's Washington College of Law

International Engagement

Freedom of information and the right to know are concepts embraced globally. Many nations have designated information commissioners or ombudsmen in roles similar to OGIS's; the Office has participated in discussions and programs supporting the furtherance of open government principles worldwide. In FY 2011, OGIS's international outreach included the following:

Meetings with

- Bangladeshi Information Commissioners
- A government representative of the Netherlands
- Government representatives of Spain
- A representative from the Indonesian Central Information Commission
- The Ombudsman of the European Union
- Scholars from China and Vietnam

Attendance at

- United Nations Educational, Scientific and Cultural Organization ([UNESCO](#)) Seminar on Transparency, in partnership with the government of Brazil; Brasilia, Brazil
- Sino-U.S. Workshop on Government Information Disclosure, in conjunction with [Yale Law School's China Law Center](#); Hangzhou and Beijing, China

OGIS launched a series of FOIA roundtable discussions in FY 2011 with the DOJ's [Office of Information Policy](#) for members of the public and agency FOIA professionals to discuss specific FOIA issues. Originally designed by OIP for requesters, OGIS and OIP observed that inviting agency FOIA professionals to the roundtables encouraged communication between the two groups. In FY 2011, Roundtable topics included law enforcement records and referrals and consultations. These Roundtables are scheduled regularly in FY 2012.

BEST PRACTICES: Customer Service

As President Obama said in his April 2011 Executive Order, the “public deserves competent, efficient, and responsive service from the Federal Government.” FOIA is all about customer service. Some of the cases OGIS handles are rooted in poor customer service. However, many agencies are trying to do things the right way.

E-mails sent to FOIA-specific addresses at the U.S. Commission on Civil Rights are routed to multiple employees at the Commission so that if FOIA professionals are away, the agency can begin processing the request.

The Federal Financial Institutions Examination Council lists on its web site e-mail addresses of subject-matter experts on 17 categories of information so the public can contact those individuals directly with questions and perhaps avoid having to file a FOIA request.

About two years ago, the State Department created a permanent task force dedicated to processing the 250 oldest requests within the agency. These FOIA professionals have homed in on some of the more complex and voluminous requests logjammed in the agency for some time, including many of the requests related to the September 11, 2001, terror attacks. The “250 Task Force” has contacted requesters to see if they are still interested; confirmed that the National Archives has the requested materials and referred requesters there; and retrieved documents from retired records instead of bureau files. This helped whittle the backlog, though many old requests remain.

Web site improvements, including proactive disclosures, are another best practice. The Export-Import Bank added to its web site a public feedback link allowing users to suggest improvements to the site. The National Endowment for the Arts posts all grants awarded by the agency. The Office of the Secretary of Defense and Joint Staff posts every FOIA release that does not have privacy implications in searchable form.

OGIS staff also presented to the public as part of the National Archives’ “[Know Your Records](#)” series. The sessions, held at the National Archives’ buildings in Washington, DC, and College Park, MD, focused on FOIA and FOIA dispute resolution.

Web Presence

OGIS increased its online presence in FY 2011 as its web site received hits from across the nation and the globe: users in all 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands, and 78 foreign countries visited the site. The new OGIS web site underwent a major redesign to increase its usability and launched in early FY 2012.

OGIS also launched its blog in FY 2011, [The FOIA Ombudsman: Information and Advice](#), which also has resulted in page views from around the world. OGIS staff and guest bloggers post entries on various FOIA-related topics including fees, FOIA Public Liaisons, proactive disclosures, and OGIS events and training. The Office hopes it will be an ongoing conversation about FOIA—engaging readers as active commentators on FOIA-related issues.

CUSTOMER SERVICE: THE WEB

After a year of development, OGIS launched a new web site and case management system in November 2011. The [web site](#) and OGIS Access System together help OGIS manage cases, allow OGIS customers to submit online requests for assistance and check the status of their requests, and provide requesters and agencies with tools and tips for navigating the FOIA process.

The project launch represents several milestones for OGIS:

- The case management system manages more effectively and efficiently the requests for assistance that FOIA requesters and agencies bring to OGIS.
- The system's built-in workflows and document repositories streamline and increase the transparency of OGIS's work.
- The system is among the first generation of Federal Government online services operating in the [data cloud](#).



The system's design is aimed at improving service to customers: requesters and agencies. The system allows OGIS staff to securely log into its nonpublic side to manage cases and update the web site. The web site features materials and resources designed to help requester and agency constituents with the most frequently used items in the [OGIS Toolbox](#).

Some of the web site's features are

- A [searchable library](#) of FOIA terms and concepts
- An online submission process for requesters and agencies to [request OGIS assistance](#)
- Customers' ability to review in real-time the [status of OGIS cases](#)
- Capability to engage with the public on [ways to improve FOIA](#)
- The OGIS Blog: [The FOIA Ombudsman: Information and Advice](#)

The case management system can be accessed on OGIS's [web site](#).

Through its parent agency, the National Archives, OGIS also began partnering with the Environmental Protection Agency and the Department of Commerce to help build a [multiagency FOIA portal](#) to automate FOIA processing and reporting, store FOIA requests and responses in a repository, and allow requesters to track the status of requests. The project is being built by leveraging the infrastructure of *regulations.gov*, which is being re-tooled to handle FOIA requests. More partners are welcome.

CUSTOMER SERVICE: AGENCY REVIEW

“The Office of Government Information Services shall review policies and procedures of administrative agencies under this section; [and] review compliance with this section by administrative agencies.”

The Freedom of Information Act

5 U.S.C § 552(h)(2)(A)-(B)

OGIS has devised a cost-effective way to start implementing the second prong of its statutory mission—to review agencies’ FOIA policies, procedures, and compliance—by analyzing existing data and using available resources. The process that OGIS developed to begin to implement this part of its mission includes

- Reviewing proposed changes to agency FOIA regulations
- Collaborating with Federal agencies in developing changes to FOIA regulations, policies, and practices
- Analyzing agencies’ [Annual FOIA Reports](#) and [Chief FOIA Officer Reports](#) and observing agency practices through casework to develop Government-wide Best Practices.

In FY 2011, OGIS submitted public comments to proposed changes to the FOIA regulations of the

- Department of Defense
- Department of Justice
- Department of Transportation
- Department of Veterans Affairs
- Federal Housing Finance Agency
- Financial Stability Oversight Council

OGIS also publicly commented on proposed changes to a form used by requesters seeking their own or third-party records from U.S. Citizenship and Immigration Services; the agency incorporated OGIS’s suggestions.

BEST PRACTICES: Collaboration and Coordination

OGIS has observed that when agencies collaborate and coordinate on FOIA requests, FOIA has a greater chance of working as intended. In its day-to-day casework, OGIS bridges requesters and agencies; just as important is linking FOIA professionals to the custodians of the requested documents, information technology professionals, records managers, FOIA attorneys, and in cases involving referrals and consultations, FOIA professionals in other agencies. OGIS encourages all FOIA professionals to build alliances with their counterparts in other agencies as well as their non-FOIA colleagues within their agencies. Such cooperation eases the records search and positions agencies to be ready to tackle any request.

In some agencies, including the Chemical Safety and Hazard Investigation Board, Federal Energy Regulatory Commission, Federal Trade Commission, and Federal Labor Relations Board, FOIA and IT professionals regularly work together on FOIA matters.

At Amtrak, FOIA and IT professionals have set up conference calls with requesters to discuss requests.

Information technology professionals at the Surface Transportation Board work with the agency's FOIA officer to write detailed instructions for performing efficient and thorough electronic searches.

Office of the U.S. Trade Representative FOIA professionals meet regularly with other offices within the Executive Office of the President to see if similar FOIA requests have been received and if a coordinated response might be warranted.

At the National Aeronautics and Space Administration (NASA), FOIA offices with no backlogs provide processing support for other NASA components with backlogs.

In what OGIS hopes will become a widely accepted practice throughout the executive branch, OGIS collaborated with the Department of the Interior and the Consumer Financial Protection Bureau (CFPB) in reviewing existing and newly written FOIA regulations. OGIS shared many of its Best Practices with both entities to ensure that the regulations were written clearly, explained the FOIA administrative process, and provided information pertaining

to OGIS and its services. OGIS is pleased to learn that as a result of this collaboration, the CFPB incorporated several OGIS suggestions into its final FOIA regulations.

OGIS continues to regularly update its Best Practices Chart, available on OGIS's web site. OGIS incorporated many of the best practices it identified in reviewing agencies' Chief FOIA Officer Reports and in offering mediation services into both its inter- and intra-agency dispute-resolution skills training programs. The discussion of best practices in these training programs helped OGIS clarify existing best practices and develop new ones.

These steps are building blocks for the robust review strategy that OGIS envisions to implement fully this aspect of its mission. The Office is collaborating with the National Archives' [Information Security Oversight Office](#) (ISOO), which oversees Government and industry security classification programs, to explore ways to create an OGIS assessment program that will fulfill this part of its mission. OGIS hopes to launch its first such assessment in Fiscal Year 2012.

A LOOK AHEAD

In its third year, OGIS continues to build on the successes of its first two years to fulfill its statutory mandate as fully as possible with its staff of seven. OGIS plans to continue its vigorous approach to both aspects of its statutory mandate related to providing mediation services and reviewing agency FOIA policies, procedures, and compliance.

Although OGIS has not, to date, handled any cases that have gone into formal mediation, it is ready with trained professionals should the need arise, and it continues to consider various mediation program models. OGIS's goal is to formally establish an effective and cost-efficient mediation program that can work with geographically dispersed parties as well as parties in and around the nation's capital. OGIS continues work in FY 2012 with the Harvard Negotiation and Mediation Clinical Program in laying the groundwork for measuring the Office's effectiveness.



To create a formal assessment program, OGIS is building on National Archives programs and resources to collaborate with the agency’s ADR expert and the Information Security Oversight Office. OGIS will continue to work with National Archives experts to explore ways to improve access to Government records. OGIS looks forward to continuing collaboration with the Federal interagency [Open Government Working Group](#), including on the international [Open Government Partnership](#).

SPECIAL THANKS

OGIS thanks the 112th Congress for its support of the FOIA Ombudsman’s office: [Senate Judiciary Committee](#) Chairman Senator Patrick Leahy; Committee Member Senator John Cornyn; Representative Darrell Issa, chairman of the [House Committee on Oversight and Government Reform](#); and Rep. Trey Gowdy, chairman of that committee’s Subcommittee on Health Care, District of Columbia, Census and the National Archives, and their personal and committee staffs.

OGIS is grateful to David S. Ferriero, Archivist of the United States; William J. Bosanko, Executive for Agency Services; and National Archives General Counsel Gary M. Stern for their support of the Office’s work and deep understanding of its important mission in America’s democracy. Many colleagues at the National Archives help OGIS fulfill its mission, for which we are most appreciative. Assistant General Counsel Jean Whyte, director of RESOLVE, the National Ar-



chives' Alternative Dispute Resolution (ADR) program, provided invaluable input to and helped teach OGIS's revamped Dispute Resolution Skills courses in FY 2011. Teamwork between FOIA and ADR professionals at agencies Government-wide is a key OGIS best practice, and OGIS is pleased to take the lead through its parent agency, serving as an example of how this innovative collaboration can succeed.

Among the cases OGIS saw in FY 2011

were a handful involving FOIA requests to the National Archives. Several colleagues patiently provided answers to OGIS's many questions, for which the Office is most appreciative: Martha Murphy, Chief of Special Access, Freedom of Information Section; Jay Olin, Deputy FOIA Officer; Richard Peuser, Supervisory Archivist for the Textual Archives Services Division; and Joseph Scanlon, FOIA and Privacy Act Officer.

OGIS thanks Sandy Paulino and Mark Sprouse of the National Archives Facility and Property Management Division, who were instrumental in OGIS's move in December 2011 from the National Ar-

chives facility in College Park, MD, to Washington, DC, near Capitol Hill. The new location places OGIS geographically closer to the Federal departments and agencies with which it works, as well as many members of the requester community.

Finally, OGIS thanks Kara Carnley Murrhee, OGIS's 2011 summer law clerk and a student at the University of Florida Levin College of Law, who volunteered as a member of the OGIS team.



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