

**The National Archives and Records Administration’s
Fifth National Action Plan for Open Government 2022-2024
Lessons Learned from the FOIA Advisory Committee**

September 26, 2023

One of eight initiatives in the [National Archives and Records Administration’s Fifth National Action Plan for Open Government](#) calls on the agency to provide “lessons learned” from the creation and administration of the Freedom of Information Act (FOIA) Advisory Committee. The National Archives and Records Administration (NARA) recommends in its National Action Plan (NAP) “that the FOIA Advisory Committee be used as a model for other similar bodies that could be created going forward (in a future-looking NAP) that reflects a collaborative partnership between the government and open government community.” This document contains those learned lessons and provides ideas for consideration as NARA continues working with civil society partners to lead the U.S. on open government issues while fulfilling three of NARA’s four strategic goals—*Make Access Happen*, *Connect with Customers*, and *Maximize NARA’s Value to the Nation*.

Background

Federal advisory committees have played an important role in shaping public policy since the early days of our Republic. President George Washington is credited with first using outside experts for advice. Facing an uprising in western Pennsylvania over a whiskey tax—the first-ever federal tax on a domestic product—President Washington appointed an ad hoc group of commissioners to investigate the Whiskey Rebellion of 1794. The commissioners met with concerned citizens and ultimately advised the President that enforcing the tax would require “the physical strength of the nation.”¹ Fast forward 178 years. Congress passed the Federal Advisory Committee Act (FACA) in 1972 governing the legal foundation for how federal advisory committees are established and operate. Today, hundreds of advisory committees exist across the government.

In 2011, President Obama launched the global [Open Government Partnership](#) (OGP) at the U.N. General Assembly meeting with seven other heads of state and an equal number of leaders from civil society. Today more than 70 countries and over 100 local governments are members of OGP. As part of the OGP, the U.S. in 2011 published 26 open government initiatives in its first [National Action Plan](#). Two years later, the Administration released its [Second National Action Plan](#), building on commitments in the first plan and setting new ones. Among the 23 commitments was to:

“establish a formal FOIA Advisory Committee, comprised of government and non-governmental members of the FOIA community, to foster dialog between

¹ Ron Chernow, *Alexander Hamilton*, Penguin Press, 2004.

the Administration and the requester community, solicit public comments, and develop consensus recommendations for improving FOIA administration and proactive disclosures.”

Archivist of the United States David S. Ferriero signed the Committee’s [first charter](#) on May 20, 2014, and the [inaugural meeting](#) was held on June 24, 2014. The original charter and the subsequent four charters task NARA’s Office of Government Information Services (OGIS) with chairing and providing administrative and managerial support to the Committee, which comprises 20 members from both inside and outside of government.

Now in its fifth term ([2022-2024](#)), the Committee has made 52 recommendations (as of September 2023) to improve the administration of FOIA and proactive disclosures. The dedication and commitment of the Committee’s volunteer members from both inside and outside of government reflect strong collaboration and provide a model for other such partnerships. What follows are lessons learned by OGIS in the areas of Foundation, Vision and Commitment; Balance; Leadership; Transparency; and Accountability.

Lessons Learned: Foundation, Vision and Commitment

- Mindful establishment of a committee, along with careful thought about what success looks like, establishes a strong foundation. Before beginning the work to establish a federal advisory committee, invite thought and conversation both inside and outside of NARA about shared goals between the government and the open government community. How could collaboration between the two communities result in shared successes? How would such a partnership dovetail with NARA’s mission, vision and values and contribute to its strategic goals? How would the American public benefit from such a partnership? The FOIA Advisory Committee, for example, operates under the directive in FOIA that OGIS “identify procedures and methods for improving compliance” with FOIA, 5 U.S.C § 552(h)(2)(C), which, in turn, ties directly to NARA’s strategic goals

to *Make Access Happen* and *Connect with Customers*. That foundation is crucial to the Committee's existence.

- Establishing a federal advisory committee requires care and thought in accordance with the Federal Advisory Committee Act (FACA). The General Services Administration (GSA)'s Final Rule on Federal Advisory Committee Management, [41 CFR Parts 101-6 and 102-3](#), provides specific requirements for the establishment and management of federal advisory committees. The work of an attorney from NARA's Office of General Counsel was invaluable in guiding the establishment of the FOIA Advisory Committee in 2014, including the writing of its charter and its bylaws. That guidance from the Office of General Counsel continues today as both legal and ethical issues arise from time to time. Another key partner includes NARA's Executive Secretariat's office.

- A lot of administrative behind-the-scenes work goes into establishing and managing an advisory committee. FACA's implementing regulation, 41 CFR § 102-3.120, calls on a committee's Designated Federal Officer (DFO) to perform a number of tasks, including approve or call meetings of the committee and its subcommittees; approve agendas (unless it is a Presidential advisory committee); attend all meetings; and chair a meeting when so directed by the agency head. Other tasks include ensuring that a transcript of full committee meetings is posted online and that minutes of the meeting are taken, certified by the DFO and the committee chairperson and posted online.
- Recognizing this work and ensuring that the DFO has the resources needed to do the job is crucial. During the third ([2018-2020](#)) and fourth terms ([2022-2024](#)) of the Committee, we took advantage of NARA's detailee program and had five NARA employees detailed part-time to OGIS at different times over the course of four years to assist with DFO duties. Today, OGIS staffing permits the designation of two alternate DFOs, available to step in when the DFO is unable to participate.
- The commitment and support from the head of the agency is crucial to an advisory committee's success. While the GSA rule contemplates advisory committee responsibilities for the heads of agencies, the Archivist of the United States (AOTUS) has made the Committee a particular priority by keeping abreast of its work, delivering opening remarks at each public meeting, and carefully deliberating on each recommendation passed by the Committee. That welcome commitment from the AOTUS gives the FOIA Advisory Committee gravitas.



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Lessons Learned: Balance



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- FACA and its implementing regulation require balanced membership: “An advisory committee must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed,” 41 CFR § 102-3.30(c). The FOIA Advisory Committee charter designates seats for representatives of Cabinet-level departments as well as independent agencies. The non-government seats are designated for non-governmental organizations that advocate on FOIA matters; individuals who represent the interests of requesters qualifying for various FOIA requester fee categories, including commercial and news media; and individuals who represent the interests of academicians and historians.
- One of the successes of the FOIA Advisory Committee is that it has brought together people from across the political spectrum who care deeply about FOIA and government transparency.
- Our efforts to build a team that is open minded, curious and willing to learn from each other have resulted in more productive deliberations. We have found that as one term ends and another begins, advocating for re-appointment of several members from the previous term provides valuable continuity. Also key is ensuring that members understand their roles. For the FOIA Advisory Committee, that means understanding the agency or group of requesters they are appointed to represent, and understanding that they advise the Archivist of the United States on improvements to the administration of FOIA.

Lessons Learned: Leadership

- Strong leadership by the Committee Chairperson and the Designated Federal Officer (DFO) is critical to an advisory committee’s success. That leadership is required on Day One to set expectations and chart a course. The FOIA Advisory Committee has kicked off each of its five terms with public facilitated brainstorming and information sharing sessions to help set priorities for the two-year term. Those sessions result in the establishment of subcommittees, which in accordance with the Committee’s [Bylaws](#), are co-chaired by one government member and one non-government member.
- For the FOIA Advisory Committee, we have found that three subcommittees are ideal. In the first ([2014-2016](#)), second ([2016-2018](#)), third ([2018-2020](#)) and fifth ([2022-2024](#)) terms of the FOIA Advisory Committee, Committee members organized themselves into three subcommittees. The Committee’s fourth term ([2020-2022](#)) had four subcommittees. Given that the DFO (or their alternate) is required by FACA to attend all subcommittee

meetings and that the Chairperson generally attends each subcommittee meeting, the administrative obligation was significantly heavier with four subcommittees than with three.

- Strong administrative support by the DFO is crucial to creating a structure in which the FOIA Advisory Committee can do its work. In between quarterly public meetings of the full Committee, the subcommittees should meet every other week. Subcommittee meetings are crucial for gathering information and deliberating ideas that may—or may not—result in recommendations. Important roles the DFO can play to serve as a bridge between and among the subcommittees to avoid redundancy and to liaise between the Committee members and information resources both within and outside of NARA.
- DFO training offered by GSA is an excellent foundation for the job. GSA’s Committee Management Secretariat offers an online FACA Fundamentals course (FACA 101) and an instructor-led FACA Management Training course (FACA 201).



Lessons Learned: Transparency

- FACA and its implementing regulation require that meetings of the full advisory committee be open to the public, its records be publicly available and that the public be permitted “to file a written statement with the advisory committee,” 41 CFR § 102-3.140(c), and “to speak or otherwise address the advisory committee if the agency’s guidelines so permit,” 41 CFR § 102-3.140(d). Since the Committee’s earliest days, NARA has streamed the FOIA Advisory Committee meetings on NARA’s YouTube channel with the assistance of NARA’s audio-visual staff, making the meetings accessible to anyone with an internet connection. OGIS has welcomed public input both written and oral.
 - During the Committee’s fourth and fifth terms, the OGIS staff was challenged by written submissions that moved beyond “written statements,” and required review and remediation for compliance with the requirements of Section 508 of the Rehabilitation Act. That created an opportunity for OGIS to work with NARA’s web team to create a [Public Comments Form](#) for not only the FOIA Advisory Committee but also the



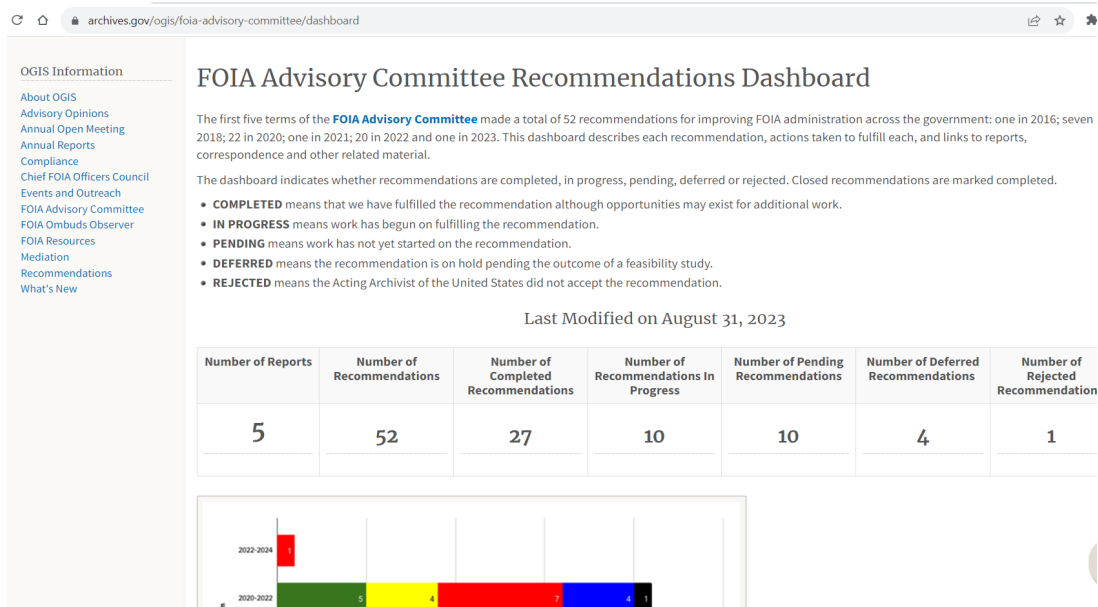
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Chief FOIA Officers Council and the OGIS Annual Open Meeting. The portal launched in January 2023.

- When the COVID-19 pandemic began in March 2020 and the Office of Management and Budget encouraged agencies to provide maximum telework flexibilities for telework-eligible employees, OGIS led the move from in-person meetings to virtual meetings for the FOIA Advisory Committee. The first virtual meeting was on May 1, 2020.
- One of the unforeseen advantages of virtual meetings was that members were no longer required to travel—at their own expense—to Washington, DC, for meetings. That created an opportunity for the fourth term when the Acting AOTUS appointed a government member based in Georgia and five non-government members based in Arizona, Massachusetts, New York, Pennsylvania and Wisconsin, respectively. It is less likely that the Committee would have had such geographic diversity were meetings still in person in Washington, DC. The fifth term (2022-2024) has members from California, Florida, Georgia and Ohio. Such an outside-the-Beltway perspective provides important insights into a law that exists for everyone, not just those who live in the Washington, DC-area.

Lessons Learned: Accountability

By 2020, the FOIA Advisory Committee had made a total of 30 recommendations to the Archivist of the United States. There was no efficient way for OGIS to track these recommendations and the fourth term was clearly on a path to pass even more



recommendations. Although FACA requires advisory committees to report annually to GSA on their activities, including the implementation rate of recommendations, there is not an efficient way to find that information.

OGIS designed and developed a simple user-friendly dashboard, hosted on archives.gov/ogis. The [Dashboard](#) includes the language of each recommendation with links to relevant data, research, and reports generated to support each recommendation. The Dashboard also tracks the “real time” status of each recommendation noting if a recommendation is complete, in progress, pending, deferred, or rejected.

The Dashboard provides transparency and accountability of the Committee’s work while providing a low-cost and effective way to share the information publicly and enhance public engagement.

Originally conceived as an internal tool for the Committee and for agency staff, the Dashboard has matured with the addition of recent recommendations into serving as a clearinghouse for information related to the Committee’s work and research.

The dashboard has proven to be a model of excellence. The Office of the Chief Records Officer is interested in developing a similar tool for its work within the Records Management Oversight and Reporting program. The Executive Secretariat’s office has suggested that other NARA advisory committees implement similar tools, building upon the best practices that OGIS has identified. External to NARA, the Technology Committee of the Chief FOIA Officers Council, co-chaired by representatives from the Departments of State and Veterans Affairs, has asked if the technology to create such a tool can be mimicked for their needs. (It can.)

FOIA Advisory Committee members have commented publicly on this tool: Committee Member Patricia Weth of the U.S. Environmental Protection Agency noted at the Committee meeting held on September 8, 2022, that “this wonderful dashboard ... is incredibly helpful and is a great resource for committee members” while Jason R. Baron of the University of Maryland stated at the Committee meeting of September 14, 2022, that “OGIS has done a fantastic job with the dashboard.”

Looking Ahead

The FOIA Advisory Committee has left an important mark on the federal FOIA Advisory Committee landscape since its first meeting in 2014. Its recommendations have resulted in:

- The establishment of the Chief FOIA Officers (CFO) Council’s Technology Committee in 2018. The Committee, which comprises federal employees, has published a number of reports on [FOIA technology, video redaction, FOIA searches and a FOIA Reference Model](#). The Committee, in collaboration with OGIS and the Office of Information Policy presented the [NexGen FOIA Tech Showcase](#), a two-day event showcasing FOIA technology from 22 vendors.
- The inclusion of questions in Chief FOIA Officers reports on a number of issues including technology, standard operating procedures, exploration of non-FOIA means to

access first-party information, and neither-confirm-nor-deny responses, known as *Glomar* responses.

- The establishment of the CFO Council's [Committee on Cross-Agency Collaboration and Innovation \(COCACI\)](#) which meets monthly and is focusing on virtual FOIA office administration; Government Information Specialist (GIS) job series; and technology standardization.
- The publication of several OGIS reports, including [Methods Agencies Use to Prepare Documents for Posting on Agency Freedom of Information Act \(FOIA\) Websites](#), which offers 18 best practices for agencies to consider when preparing and posting documents, and that we believe to be the most comprehensive government report on the subject.

One lesson that the current Committee term took away from the prior four terms was that the Committee should take stock of how its prior 52 recommendations have improved the FOIA process across the federal government. As a result, the Committee formed an Implementation Subcommittee, whose mission it is to provide a report on how past recommendations have been implemented. This work is ongoing.