

**Audit of NARA's Office of
Government Information Services**

OIG Audit Report No. 12-14

September 11, 2012

Table of Contents

Executive Summary	3
Background	4
Objectives, Scope, Methodology	7
Audit Results.....	8
Appendix A – Acronyms and Abbreviations.....	18
Appendix B – Management's Response to the Report.....	19
Appendix C – Report Distribution List.....	20
Appendix D – OGIS Best Practices Chart Page 1	21

Executive Summary

The National Archives and Records Administration's (NARA) Office of Inspector General (OIG) completed an audit of NARA's Office of Government Information Services (OGIS or Office). The Openness Promotes Effectiveness in our National Government Act of 2007 amended the Freedom of Information Act (FOIA) to create OGIS within NARA. The Office opened on September 8, 2009.

OGIS is responsible for working with executive branch agencies and requesters to improve the administration of FOIA. Pursuant to 5 U.S.C. § 552(h), OGIS is charged with:

- Reviewing agencies' FOIA policies, procedures and compliance with FOIA;
- Offering mediation services to FOIA requesters and agencies and issuing advisory opinions as appropriate; and
- Recommending policy changes to Congress and the President.

OGIS also serves – in the words of Congress – as the nation's FOIA Ombudsman to facilitate communications between government agencies and the public. OGIS advocates for FOIA itself, not for requesters over agencies, or vice-versa.

The objective of this audit was to determine whether OGIS was adequately established and was meeting the intent for which it was established. In the absence of formal metrics directing OGIS how to meet its statutory requirements the OIG analyzed OGIS case files, reviewed documentation, and interviewed OGIS officials to determine if OGIS was meeting its mission by adhering to its statutory requirements. Based on audit work performed the OIG found the Office met the requirements of FOIA 5 U.S.C. § 552(h).

Our review identified two issues related to a lack of resources that hindered OGIS's ability to close cases in a timely manner and prevented OGIS from implementing a more robust review process to better meet its mission. This report contains two recommendations designed to improve OGIS's ability to continue meeting the requirements of FOIA 5 U.S.C. § 552(h).

Background

The Openness Promotes Effectiveness in our National Government Act of 2007 amended the Freedom of Information Act (FOIA) to create an Office of Government Information Services (OGIS or Office) within the National Archives and Records Administration (NARA). The Office opened on September 8, 2009, with one staff member (the Director); 5 staff members were in place by December 2009, and a full staff of 7 (from both the agency access and FOIA requester communities) was realized by May 2010 and remained as of April 25, 2012.

Figure 1: Timeline of OGIS's Establishment and Milestones



OGIS is responsible for working with executive branch agencies and requesters to improve the administration of FOIA. Pursuant to 5 U.S.C. § 552(h), OGIS is charged with:

- Reviewing agencies' FOIA policies, procedures and compliance with FOIA;
- Offering mediation services to FOIA requesters and agencies and issuing advisory opinions as appropriate; and
- Recommending policy changes to Congress and the President.

The Deputy Director of OGIS stated these mandates fall into two basic areas: (1) review of policies, procedures and compliance; and (2) mediation services to resolve disputes between FOIA requesters and Federal agencies.

When conducting a review of agencies' policies, procedures and compliance, OGIS may:

- Conduct a detailed analysis of Federal agencies' Annual FOIA Reports and Chief FOIA Officer Reports to identify strengths and weaknesses in agencies' FOIA policies and procedures;
- Gather relevant non-confidential data through OGIS's role in providing mediation services to resolve disputes. OGIS uses case-specific information only to the extent that it does not identify the requester and in the course of compiling data and identifying trends; and
- Work collaboratively with agencies in conducting a review of FOIA policies and practices, including reviewing the agency's FOIA regulations.

OGIS released reports in March of 2011 and 2012 detailing its activities and observations, and made these reports available to the public on its web site. OGIS also uses the information gathered when conducting reviews of agencies' policies, procedures and compliance to:

- Make recommendations to Congress and the President to improve FOIA compliance and develop best practices in FOIA administration;
- Coordinate, support, and participate in training and informational programs to promote best practices in the FOIA process among Federal agencies and requesters; and
- Promote openness and transparency in government.

OGIS offers mediation services which is an umbrella term that encompasses facilitation, ombuds services, and formal mediation.

Facilitation is used by the OGIS staff to work in a less-structured, informal manner with the parties to find common ground to resolve disputes. OGIS assists requesters and agencies through facilitation, for example, by helping requesters narrow the scope of their FOIA requests, encouraging agencies to reconsider determinations to withhold requested agency records, obtaining information related to an agency policy and/or procedure, and assisting agencies in working with requesters.

Ombuds services occur when an ombudsman acts as a confidential and informal information resource, communications channel, and complaint-handler. OGIS assists customers through its ombuds services by providing FOIA requesters with resources and assistance in filing their FOIA requests and appeals and helping them to better understand agencies' FOIA practices. These requesters are often uncertain about the application of FOIA and the Privacy Act when agencies process requests for access to records. For this reason, OGIS assists Privacy Act requesters with information about the process or status of requests because many of those requests overlap with FOIA. In addition, OGIS also coordinates, supports, and participates in training and informational programs for Federal agencies and requesters on using alternative dispute resolution methods, including mediation, for FOIA disputes.

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

In March of 2012 the Department of Justice (DOJ) proposed a revision to one of its Privacy Act System of Records Notices that included a description of an ombudsman function within the Office of Information Policy that would have conflicted with the work performed by OGIS as FOIA ombudsman. This prompted Sens. Patrick Leahy (D-Vermont) and John Cornyn (R-Texas), the lawmakers who sponsored the Openness Promotes Effectiveness in our National Government Act of 2007 that led to the creation of OGIS, to send a letter to Eric Holder, Attorney General of the United States, stating, "DOJ's proposal is inconsistent with the plain language of [the Open Government Act] and with our intent."

During an interview OGIS's Director and Deputy Director stated that OGIS's relationship with the DOJ could be more cooperative, but OGIS was able to work with the DOJ in order to meet its statutory requirements.

Objectives, Scope, Methodology

The overall objective of this audit was to determine whether NARA's Office of Government Information Services was adequately established and was meeting the intent for which it was established.

In order to accomplish our objectives we performed the following:

- interviewed the Director and Deputy Director of the Office of Government Information Services;
- requested and reviewed documents compiled by the Office of Government Information Services;
- reviewed Office of Government Information Services case log information and corresponding statistics; and
- reviewed the applicable laws and regulations including 5 U.S.C. § 552(h) of the Freedom of Information Act.

Our audit work was performed at Archives II in College Park, Maryland as well as OGIS's location at 800 North Capitol Street in Washington, DC. The audit took place between March 2012 and June 2012. We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Audit Results

1. OGIS met the requirements of 5 U.S.C. § 552(h) of the Freedom of Information Act.

OGIS is responsible for working with executive branch agencies and requesters to improve the administration of FOIA. Pursuant to 5 U.S.C. § 552(h), OGIS is charged with the following:

- Reviewing agencies' FOIA policies, procedures and compliance with FOIA;
- Offering mediation services to FOIA requesters and agencies and issuing advisory opinions as appropriate; and
- Recommending policy changes to Congress and the President.

In the absence of formal metrics directing OGIS how to meet its statutory requirements the OIG analyzed OGIS case files, reviewed documentation, and interviewed OGIS officials to determine if OGIS was meeting its mission by adhering to its statutory requirements. Based on audit work performed the OIG found the Office met the requirements of FOIA 5 U.S.C. § 552(h).

Reviewing agencies' FOIA policies, procedures and compliance with FOIA

As detailed in its March 2012 report, OGIS devised methods to begin implementing its review of agencies' FOIA policies, procedures, and compliance with FOIA. These methods included OGIS reviewing and commenting on proposed changes to department and agency FOIA regulations, both by submitting public comments through NARA and by working collaboratively with agencies before the public comment period. The OIG reviewed OGIS's comments on the proposed changes to FOIA regulations for six agencies and found they appeared adequate by identifying areas where FOIA regulations should be modified before publication to comply with FOIA requirements. In fiscal year (FY) 2011, OGIS submitted public comments to proposed changes to 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. OGIS's comments on the proposed changes to this form improved the process requestors use to obtain information from the agency under FOIA and the Privacy Act of 1974.

OGIS's Deputy Director stated during an interview that the results of its reviews of Federal agencies' FOIA Annual Reports, Chief FOIA Officer Reports, and observations of agency practices through casework can be found in OGIS's March 2011 and 2012 reports. The OIG reviewed OGIS's 2011 and 2012 reports and found that they included detailed observations of agency practices. Additionally, OGIS created a Best Practices Chart (See Appendix D) based on the Office's own observations and its review of all 94 reports to the Attorney General from Agency Chief FOIA Officers. The OIG reviewed OGIS's Best Practices Chart and notes that OGIS continues to regularly update it.

OGIS also collaborated with the Consumer Financial Protection Bureau (CFPB) in reviewing written FOIA regulations. OGIS shared many of its best practices with the CFPB to ensure that the regulations were clear, explained the FOIA administrative process, and provided information pertaining to OGIS and its services. As a result of this collaboration, the CFPB incorporated several OGIS suggestions into its final FOIA regulations.

Finally, OGIS also stated when agencies request OGIS assistance it allows the Office the ability to learn and review the agencies' policies and procedures and determine whether the agencies are in compliance with FOIA. For example, in casework reviewed by the OIG a requester contacted OGIS and disputed the United States Postal Service's (USPS) claim that the number of pieces of mail sent by an election campaign must be withheld under Exemption 4 of FOIA. After hearing from the requester OGIS opened a case and contacted USPS. USPS reviewed its response and confirmed that it was properly processed under FOIA as per its regulations. The USPS explained its unique role as a business as well as an agency and its need to protect data to protect its own business interests. Therefore, the case was closed and OGIS was able to confirm that USPS action appeared to be in compliance with FOIA.

Offering mediation services to FOIA requesters and agencies

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

As an example, OIG reviewed a case where OGIS received a letter in March 2010 from an imprisoned veteran who had requested a section of a document from the Department of Veterans Affairs (VA). The VA denied the FOIA request because the document is freely available online; however, the customer does not have internet access at his prison facility. OGIS contacted the VA, explained the situation, and the agency fulfilled the request. OGIS served a vital ombudsman role by short-circuiting what could have become a lengthy series of back-and-forth letters.

OGIS opened 764 cases in response to 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 also helped nearly 500

callers and e-mailers. The OIG reviewed OGIS's detailed case files for a sample of 30 cases opened from 2009 through 2012. OIG's review of these case files showed that OGIS followed its general process for handling cases:

1. Opening a case:

- Customer describes the dispute, the assistance requested and provides any relevant correspondence
- OGIS assigns a case number which is provided to the customer
- OGIS asks for signed consent from customers who are FOIA requesters that allows OGIS to discuss the requests with the appropriate agencies without violating the Privacy Act
- An OGIS staff member is assigned the case and works to resolve the dispute
- General information about the case (excluding any personally identifying information) is provided publicly in the OGIS Case Log at OGIS's website

2. Fact-finding:

- OGIS reviews the information provided, typically including a description of the dispute and copies of relevant correspondence, and contacts the customer for clarification if necessary
- OGIS contacts the agency FOIA Public Liaison (FPL) to describe the dispute and may be directed to FOIA professionals within the agency to further discuss the issue and gather facts;
- OGIS determines whether mediation or facilitation is appropriate to resolve the dispute

3. Resolving the dispute:

a. Facilitation

- OGIS communicates any information one party approves to share with the other, including potential solutions either party may suggest
- OGIS may suggest options for resolution
- For facilitation to succeed, the parties must agree to the resolution of the dispute

b. Mediation

- Each party must agree to participate in formal mediation
- OGIS will arrange mediation through a neutral third party who has been agreed upon by all parties to the dispute; this person may be a Federal employee or a private mediator who is trained in mediation
- Any costs associated with the mediation will be covered by OGIS
- For mediation to succeed, the parties must agree to the resolution of the dispute

c. Ombuds services

- OGIS answers queries about the FOIA process and provides general FOIA assistance
- OGIS logs and addresses observations, complaints and suggestions on FOIA issues

4. Closing the case:

- If the parties agree that facilitation or mediation has resolved the dispute, OGIS will close the case and note accordingly in the file and the OGIS Case Log, and may follow up to confirm that any agreed-upon action is taken
- If both parties cannot agree whether facilitation or mediation resolved the dispute, or agree that the dispute is not resolved, OGIS will close the case and note it was not resolved

OGIS cases were open an average of approximately 50 working days in FY 2011. Although OGIS has no investigatory or enforcement power and cannot compel an agency to release documents, the Office successfully facilitated resolutions in over two-thirds of the cases involving a true dispute in FY 2011.

Training is also an OGIS priority and supports OGIS's role of providing mediation services to FOIA requesters and agencies. Goals in providing training are:

- To recognize and support the statutory role of FOIA Public Liaison's 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; and
- 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 professionals from several agencies to create a "Dispute Resolution Skills Training for FOIA Professionals" program for FPL's. 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 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. OGIS presented five "Dispute Resolution Skills Training for FOIA Professionals" sessions in FY 2011. OIG reviewed OGIS's training materials for this training program and notes that they described alternative dispute resolution techniques and included class exercises.

OGIS stated this type of training they provide is important because it is much more likely that agency FOIA staff will be asked to work with OGIS to resolve disputes through informal methods than through formal mediation.

Recommending policy changes to Congress and the President

The Deputy Director of OGIS stated that OGIS makes two types of recommendations: administrative recommendations that are sent to the White House, and legislative recommendations that are sent to Congress. The Deputy Director of OGIS also stated that the Office of Management and Budget (OMB) must review legislative recommendations before they are sent to Congress. Since its inception, OGIS sent administrative recommendations to the White House on one occasion on February 16, 2011. OGIS also sent recommendations to Congress on one occasion as well, on April 24, 2012. The OIG reviewed the recommendations to both the White House and Congress and notes they identified issues OGIS encountered while performing its work and made recommendations to resolve these issues which serve to improve the administration of FOIA.

Some of the recommendations include:

- Providing assistance for requesters seeking their own records under the Privacy Act;
- Creating a Privacy Act routine use to streamline the way in which agencies share information with OGIS;
- Encouraging agency participation with the government-wide FOIA Module;
- Facilitating the coordination of inter-agency communication for government-wide FOIA requests; and
- Recommending dispute-resolution skills training for FOIA professionals.

2. The average number of cases closed by OGIS decreased due to a technological impediment.

The average volume of cases closed by OGIS decreased from 93 cases per quarter in calendar years (CY) 2010 through 2011 to 26.5 cases per quarter in CY 2012. The volume of cases closed by OGIS should remain consistent barring significant changes in the FOIA community or OGIS itself. Our review revealed that the cause of this decline was attributed to a technological impediment associated to scanners used by OGIS staff to input documents into a new case management system introduced by OGIS in the fourth quarter of CY 2011. Due to this technological impediment OGIS's process to close cases has been impeded.

The average number of cases closed by OGIS decreased from 93 cases per quarter from the first quarter of CY 2010 through the third quarter of CY 2011 to 26.5 cases per quarter from the fourth quarter of CY 2011 through the first quarter of CY 2012. The average number of cases closed by OGIS should remain consistent barring significant changes in the FOIA community or OGIS itself. Our review revealed that a new case management system introduced by OGIS in the fourth quarter of CY 2011 required using a scanner to scan all documents related to each OGIS case before the case could be officially closed. The number of pages able to be scanned per minute by OGIS was limited, which eventually impeded OGIS's ability to close cases in a timely manner. Due to the slowness of the scanner, the average number of cases closed by OGIS decreased by over 72% from the first quarter of CY 2010 through the third quarter of CY 2011 and the fourth quarter of CY 2011 through the first quarter of CY 2012.

According to OGIS's proposed rule, after a customer contacts OGIS requesting assistance, the Office reviews the request and any enclosures or attachments submitted. OGIS then enters the request into its case management system that assigns the case a number. OGIS acknowledges receipt to the customer, contacts the customer within four days of receipt to confirm receipt, and begins fact-finding.

OGIS publishes a case log on its website, which reports to the public the case number, date of receipt, a description of the nature of the issue, a description of the status of the case, and the closing date for each case. From the time OGIS was opened in September of 2009 through the start of the second quarter of CY 2012 the Office opened 930 cases. During this same time period OGIS closed 738 of these cases. From the first quarter of CY 2010 through the third quarter of CY 2011 OGIS closed an average of 93 cases per quarter. However, beginning in the fourth quarter of CY 2011 through the first quarter of CY 2012 the average number of cases closed per quarter dropped to 26.5.

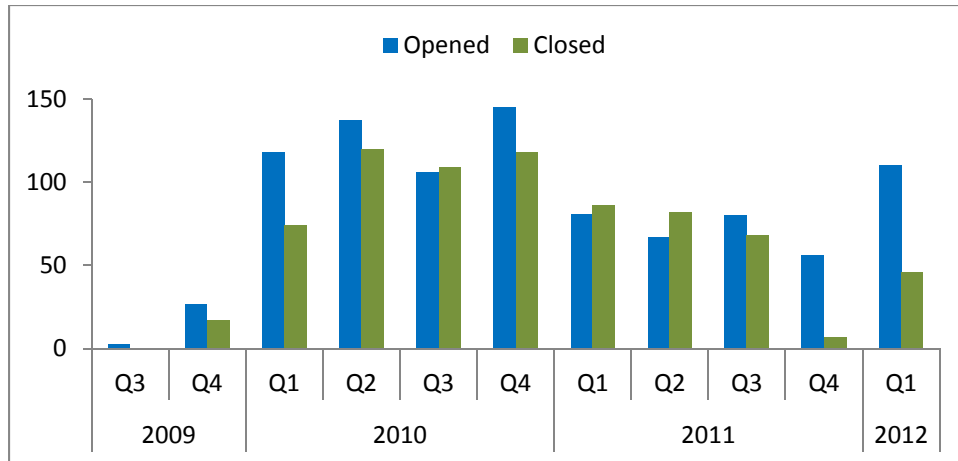


Figure 2: OGIS Cases Opened and Closed by Quarter CY 2009 – 2012

Audit interviews with OGIS’s Director and Deputy Director revealed that the decrease in average cases closed per quarter occurred directly following the installation of a new case management system called the OGIS Access System (OAS) and a new OGIS website. After a year of development the case management portion of the OAS was launched by OGIS in October of 2011, with the website launching November 28, 2011. OAS helps OGIS manage cases, allows OGIS customers to submit online requests for assistance and check the status of their requests, and provides requesters and agencies with tools and tips for navigating the FOIA process. OAS’s built-in workflows and document repositories streamline and increase the transparency of OGIS’s work.

OGIS’s Deputy Director stated that the Office requires most of the documents associated with a case to be scanned or uploaded into OAS using a scanner before the case can be officially closed. This procedure was initiated to ensure that OGIS staff would always have access to scanned case documentation associated with all closed cases should any questions be posed to OGIS regarding the case. However, in order to scan the documents into OAS the Office currently depends on two scanners: one scanner can scan 25 pages per minute while the second scanner can scan only 4 pages per minute. Because all documentation associated with a case must be scanned into OAS, as well as the fact that cases can have large amounts of documents associated with them, OGIS has not been able to scan the documents in a timely manner. Therefore, the slowness of the scanners contributed to a bottleneck that hindered the ability of OGIS to close cases in a timely manner.

In 2010 and 2011, OGIS requested that the scanner function on its copier be connected to enable more efficient and effective scanning, but learned that NARA does not allow this scanner function to be utilized. OGIS plans to purchase a more effective scanner in FY 2012.

Recommendation

1. We recommend the Office of Government Information Services (OGIS) continue to work with NARA's IT Infrastructure Support Division (BT) to procure a scanner capable of handling the needs of OGIS.

Management Response

Management concurred with the recommendation.

3. Additional resources could significantly improve OGIS's ability to address and meet its mission.

While OGIS is currently able to meet its mission, additional resources would allow the Office to: 1) have a more robust program to review FOIA policies, procedures and compliance of agencies and 2) adjust the roles of OGIS staff to segregate OGIS staff working with agencies who request OGIS assistance from OGIS staff reviewing agencies' FOIA policies, procedures, and compliance with FOIA. A lack of resources, specifically a lack of staff, prevented OGIS from implementing modifications to its program they believe would improve the effectiveness of the Office.

Some of the responsibilities Congress directs OGIS to perform include reviewing agency FOIA policies and procedures, reviewing agency FOIA compliance, and offering mediation services to resolve disputes between FOIA requesters and agencies as an alternative to litigation. OGIS officials believe these mandates fall into two basic areas and have created a two-prong statutory mission: (1) review agencies FOIA policies, procedures and compliance, and (2) offer mediation services to resolve disputes between FOIA requesters and Federal agencies.

Draft or Implement a More Robust Review Process

OGIS had a process in place during the audit to conduct reviews of agencies' FOIA policies, procedures and compliance. The process included conducting detailed analysis of Federal agencies' Annual FOIA Reports and Chief FOIA Officer Reports to identify strengths and weaknesses in agencies' FOIA policies and procedures. Also, OGIS worked collaboratively with agencies to conduct reviews of FOIA policies and practices, including reviewing the agency's FOIA regulations.

OGIS's Director and Deputy Director stated that they would like to draft procedures to create a more robust program to review agency's FOIA policies, procedures and compliance. These procedures would incorporate procedures and processes similar to what NARA's Information Security Oversight Office (ISOO) employs to assess agencies' security programs. OGIS plans to build its review program using ISOO's framework as a foundation to review agencies' FOIA policies and procedures to conduct on-site interviews and document reviews to monitor agency FOIA compliance. OGIS's Director stated a lack of staff prevented OGIS from creating a more robust review program.

Modify OGIS's Review Process

OGIS identified an inherent tension between its two statutory missions: (1) to review agencies FOIA policies, procedures and compliance, and (2) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies. Although these two missions are interrelated they require separate and distinct methodologies to be properly implemented.

OGIS stated that in implementing its two-prong mission it recognizes that agencies may be reluctant to contact OGIS for assistance with resolving a dispute because the agencies believe

OGIS may use information learned during this process to negatively report on the agencies' FOIA policies, procedures or compliance. Because of this potential issue, OGIS has determined that its review mission would best be implemented by a separate team of OGIS staffers who do not handle complaints, but instead assess agencies' FOIA policies, procedures and compliance. Given OGIS's small staff, the establishment of such a team was not deemed feasible as of the end of fieldwork.

OGIS's initial authorization was for six staff members; however it asked for and was granted an increase of one full-time equivalent (FTE) who was hired in May 2010. OGIS asked for additional FTE's as part of the FY 2012 budget initiative, however this request for additional FTE's was not approved.

Recommendation

2. We recommend the Director of the Office of Government Information Services (OGIS), through the budget process, define the resources necessary to better accomplish the statutory requirements of the Office. If NARA budget, staffing limitations, and competing priorities negate NARA's ability to fund the requirements of OGIS, we recommend this condition be reported to the appropriate external stakeholders.

Management Response

Management concurred with the recommendation.

Appendix A – Acronyms and Abbreviations

BT	IT Infrastructure Support Division
CFPB	Consumer Financial Protection Bureau
CY	Calendar Year
DOJ	Department of Justice
FOIA	Freedom of Information Act
FPL	FOIA Public Liaison
FTE	Full-Time Equivalent
FY	Fiscal Year
ISOO	Information Security Oversight Office
IT	Information Technology
NARA	National Archives and Records Administration
OAS	OGIS Access System
OGIS	Office of Government Information Services
OIG	Office of Inspector General
OMB	Office of Management and Budget
USC	United States Code
USPS	United States Postal Service
VA	Department of Veterans Affairs

Appendix B – Management’s Response to the Report



Date: AUG 30 2012
To: Paul Brachfeld, Inspector General
From: David S. Ferriero, Archivist of the United States
Subject: OIG Draft Audit 12-14, Audit of NARA's Office of Government Information Services (OGIS)

Thank you for the opportunity to provide comments on the draft OGIS audit report. We appreciate the auditor's willingness to work with us to resolve questions and comments.

We concur with both recommendations in this audit, and will begin work on an action plan when the final report is issued.

If you have any questions or need additional information on these comments, please contact Mary Drak by phone at 301-837-1668 or via email at mary.drak@nara.gov.

David S. Ferriero
Archivist of the United States

Appendix C – Report Distribution List

Archivist of the United States (N)

Deputy Archivist

Chief Operating Officer

Office of Government Information Services

Appendix D – OGIS Best Practices Chart Page 1



FOIA Requirements, Agency Best Practices, and OGIS Recommendations

Requirements	Observed Agency Best Practices	OGIS Recommended Best Practices
<p>President Obama's Memorandum for the Heads of Executive Departments and Agencies on the Freedom of Information Act Issued: Jan. 21, 2009</p>	<ul style="list-style-type: none"> • Department of Labor and Nuclear Regulatory Commission: Developed training programs for staff on implementing the President's and Attorney General's memoranda, the new requirements of the OPEN Government Act of 2007 and the "foreseeable harm" standards 	<ul style="list-style-type: none"> • Establish procedures for identifying information appropriate for disclosure and establish categories of records that can be disclosed regularly, such as calendars and travel records of senior agency leaders • Provide FOIA training to all new employees, including political appointees, and provide annual FOIA refresher training for all employees
<p>Attorney General Holder's FOIA Memorandum for Heads of Executive Departments and Agencies on the Freedom of Information Act Issued: Mar. 19, 2009</p>	<ul style="list-style-type: none"> • Department of Agriculture/Animal and Plant Health Inspection Service: Implemented a universal foreseeable harm standard to determine the appropriate withholdings under FOIA Exemptions 2, 5, and 7 • Department of Commerce: Requires certification that a foreseeable harm analysis has been applied to all withheld documents with a determination that disclosure would result in harm • Department of Agriculture/Forest Service: Employees wishing to withhold records under Exemptions 2 or 5 must provide in writing the harm that would 	<ul style="list-style-type: none"> • Establish agency-specific record types that are likely candidates for discretionary disclosure • Develop agency-specific guidance on how to conduct a foreseeable harm analysis, which clearly identifies the harm that would occur with disclosure

OGIS e-mail: ogis@nara.gov • telephone: 301-837-1996 • toll-free: 1-877-684-6448 • fax: 301-837-0348
web site: www.archives.gov/ogis • NARA's web site: www.archives.gov