

**Responses to Chairman Grassley  
from Rick Blum  
Questions for the Record  
Hearing “FOIA at Fifty: Has the Sunshine Law’s Promise Been Fulfilled?”  
August 3, 2016**

- 1. In previous testimony before Congress, you discussed the unique and important role that the Office of Government Information Services (OGIS) plays in helping to resolve Freedom of Information Act (FOIA) disputes. You also suggested that OGIS should exercise the authority given to it by Congress to “push back harder against agencies that have taken hard positions.”**

- a. What challenges do you still see OGIS facing?**

Response: We wish that OGIS would push back harder on agencies for not complying with the law. In their final determination letters, OGIS has stated when an agency’s position is not consistent with the law, however OGIS work ends there. OGIS could use its authority to issue reports and recommendations to highlight repeated problems. It could highlight particular agencies and report on corrective action an agency may take.

Since Congress created OGIS in 2007, OGIS has written no advisory opinions. There has been concern within OGIS that taking a position in a particular case threatens the Office’s neutrality, a key element for any mediator under the Alternative Dispute Resolution Act. A lack of neutrality could discourage agencies from voluntarily engaging with OGIS. OGIS cannot compel an agency to cooperate with OGIS, so taking a position on a particular dispute is, in this view, in conflict with its mandate to mediate disputes.

We do not share this interpretation. Much as judges take positions on cases but remain faithful to fairness in hearing new cases, OGIS staff can approach new cases with professionalism and fairness to all parties. The problem is that an agency may decide its position is improved by not cooperating with OGIS, and OGIS cannot compel the agency to cooperate much less compel an agency to disclose records.

We would respectfully suggest that it may be helpful for this Committee to clarify that the intent of Congress in creating the Office was for the Office to take positions on particular cases while still acting as a neutral in future cases. It could also seek a GAO report examining ways that similar offices maintain neutrality while taking positions in particular cases.

OGIS remains hampered by inadequate resources. The Congressional Budget Office (CBO) estimated that OGIS would require \$7 million annual to meet its statutory obligations.<sup>1</sup> OGIS has existed with an annual budget in recent years of about one-fifth that amount.

---

<sup>1</sup> “Cost Estimate S. 849, OPEN Government Act of 2007,” *Congressional Budget Office*, April 23, 2007. Available at: <https://www.cbo.gov/sites/default/files/110th-congress-2007-2008/costestimate/s8490.pdf>; accessed July 27, 2016.

OGIS currently exists within the Agency Services division of the National Archives and Record Administration (NARA). The portion of the Agency Services budget request dedicated to OGIS has fallen in recent years from 6.0 percent of the Agency Services budget request to 3.5 percent.

Fiscal Year	Budget Request <sup>2</sup>	% of Total Request for Agency Services
2013	1,629,000	6.0%
2014	1,074,000	4.1
2015	913,000	3.4
2016	1,094,000	3.5

While OGIS has been able recently to add staff and segment its workforce so its mediation programs and compliance functions are separate, the chronic underfunding prevents OGIS from following up to see whether an agency follows best practices or changes its procedures after an OGIS compliance review, for example.

**b. What specific ways do you, from a journalist’s perspective, think that OGIS’s role in resolving disputes could be strengthened?**

Response: OGIS’s role in resolving disputes could be strengthened by mandating that an agency participate with OGIS when requested and by giving OGIS authority to compel an agency to disclose information when the agency withholds it in violation of FOIA. This Committee could also work with other committees such that refusals to cooperate or patterns of FOIA violations are raised during oversight hearings for that agency.

**2. President Obama claims that his is the most transparent in history. Most recently, at the NATO Summit press conference on July 9, 2016, President Obama said, “We’re processing more Freedom of Information Act requests and doing so faster than ever before.” Yet, the Associated Press reported earlier this year that the Obama Administration set a new record in 2015 for failing to fulfill FOIA requests.**

**a. Is the President’s claim of “processing more Freedom of Information Act requests and doing so faster than ever before” an accurate measure of government transparency? Why or why not?**

Response: Measuring government transparency with accuracy is challenging. Processing requests faster does not indicate whether more responsive information is disclosed or withheld once the agency responds. Processing more requests, generally speaking, should mean that requesters are at least receiving some kind of a response, which is laudable, but a response is a minimal expectation and the quantity of responses does not speak to the quality of the response. In addition, FOIA itself is a vital part of government transparency but only one statute addressing issues of transparency and secrecy. Statutes such as the Administrative Procedures Act, Federal Records Act, Federal Advisory Committee Act, Sunshine in Government Act, E-

---

<sup>2</sup> Budget request figures compiled from NARA Performance Budgets. Available at <http://www.archives.gov/about/plans-reports/performance-budget/>; accessed August 3, 2016.

Government Act and others create statutory requirements and authorities to collect, preserve and disclose information to the public.

- 3. Is there anything you wish to add to, or correct for, the record? If so, please take this opportunity to provide any additional remarks or commentary.**

Response: We appreciate the opportunity to participate in this hearing. We continue to be dedicated to working with you to help Congress and this Committee fulfill its obligation to provide oversight and legislative improvements to ensure agencies are fulfilling their obligations under the law.