



May 16, 2013

Ms. Nancy E. Weiss
General Counsel
Institute of Museum and Library Services
1800 M Street NW, 9th Floor
Washington, DC 20036
via email to nweiss@imls.gov

Re: Implementing the Freedom of Information Act (78 F.R. 22501)
RIN 3137-AA22

Dear Ms. Weiss:

The Center for Effective Government welcomes the opportunity to comment on the Institute of Museum and Library Services' (IMLS) proposed Freedom of Information Act (FOIA) regulations.

Up-to-date FOIA regulations that support transparency are important for supporting the effective functioning of the FOIA system. Therefore, we encourage IMLS to revise its proposed regulations to incorporate key transparency improvements, including provisions enacted by the OPEN Government Act of 2007,¹ best practices recommended by the Office of Government Information Services (OGIS), and guidance issued by the Office of Information Policy (OIP).

We offer the following recommendations to strengthen the proposed regulations:

1. Expand online disclosures
 - a. Establish categories of records that can be disclosed regularly
 - b. Proactively identify and disclose additional records of interest to the public
 - c. Post records released in response to FOIA requests
 - d. Publish online indexes of disclosed records
2. Improve the acknowledgment of requests
 - a. Acknowledge requests as soon as practicable
 - b. Provide information about the agency's FOIA Public Liaison
3. Clarify fees and fee waivers

¹ Openness Promotes Effectiveness in our National Government Act of 2007, P.L. 110-175.



- a. Maintain a database of waivers granted by the agency to consult for future waiver requests
- b. Adopt a reasonable threshold for minimum fee charges
4. Improve communication with the requester
 - a. Seek clarification as necessary
 - b. Provide estimated time to complete the request and opportunities to reformulate
 - c. Inform requesters of status updates
 - d. Communicate with requesters by email where appropriate
 - e. Use plain language in all communications with requesters
 - f. Notify requesters when requests are referred
5. Apply the presumption of openness
6. Notify requesters of their right to seek assistance from the agency's FOIA Public Liaison
7. Improve administrative appeals
 - a. Provide adequate time limits for requesters to submit appeals
 - b. Provide a website and/or email address for submitting appeals
 - c. Notify requesters of dispute resolution services in appeal determinations
8. Provide information about dispute resolution services

1. Expand online disclosures

We encourage IMLS to strengthen its proposed regulations to more fully embrace the use of online disclosure for public information under FOIA.

Expanding online disclosure is an important method to efficiently maximize IMLS's transparency. Posting information online maximizes the impact of the agency's FOIA efforts by allowing the public to access and use the information disclosed. For instance, millions more Americans visit government websites to seek information than file FOIA requests.² Whenever possible, IMLS should make information available to the public without requiring requesters to navigate the administrative process of the FOIA.

Additionally, online disclosure can save agency resources by reducing duplicative requests. For example, after the Department of Agriculture posted online a searchable database of 50,164 animal care inspection reports for 2006-1008, the number of incoming FOIA requests dropped by nearly 35 percent³.

President Obama's FOIA memorandum⁴ and Attorney General Holder's FOIA guidelines⁵ have also emphasized the importance of posting information online. Therefore, IMLS should proactively disclose

² See Center for Effective Government, "Fixes Early in FOIA Process Offer Greatest Potential for Impact," May 7, 2013, available at <http://www.foreffectivegov.org/fixes-early-foia-process-offer-greatest-potential-impact>.

³ Office of Government Information Services. FOIA Requirements, Best Practices, and OGIS Recommendations available at <https://ogis.archives.gov/Assets/Best+Practices+Chart+Agencies.pdf>.

information to the greatest extent possible and include provisions within its regulations outlining the agency's responsibilities in this area.

a. Establish categories of records that can be disclosed regularly

IMLS should adopt a policy to “establish categories of records that can be disclosed regularly,” as recommended by the Office of Government Information Services (OGIS).⁶ Establishing such categories of records would ensure that IMLS routinely makes key information available to the public without the need to file a FOIA request.

Recommendation: Revise the proposed regulations at § 1184.2(b) to add, “IMLS will establish categories of records that can be disclosed regularly and will routinely post them on its Web site.”

Implementation suggestion: When establishing those categories, IMLS should consult with stakeholders, including the open government community, to identify categories of records that would be useful to disclose – in particular, categories of records that shed light on core agency operations.⁷

b. Proactively identify and disclose additional records of interest to the public

IMLS should adopt a policy to proactively identify records of interest to the public and to post such records online.⁸ IMLS has a public service obligation to promptly disclose matters that would be of public interest, without waiting for a FOIA request.⁹

Recommendation: Revise the proposed regulations at § 1184.2(b) to add, “IMLS will proactively identify and disclose additional records of interest to the public.”

⁴ Barack Obama, Presidential Memorandum, “Freedom of Information Act,” The White House, Jan. 21, 2009, *available at* http://www.whitehouse.gov/the_press_office/FreedomofInformationAct (“[A]gencies should take affirmative steps to make information public”).

⁵ Eric Holder, “The Freedom of Information Act (FOIA),” Office of the Attorney General, March 19, 2009, *available at* <http://www.justice.gov/ag/foia-memo-march2009.pdf> (“[A]gencies should readily and systematically post information online in advance of any public request”).

⁶ Office of Government Information Services, “FOIA Requirements, Agency Best Practices, and OGIS Recommendations,” *available at* <https://ogis.archives.gov/Assets/Best+Practices+Chart+Agencies.pdf>.

⁷ The open government community has identified several types of information that agencies should regularly post online; *see* <http://www.foreffectivegov.org/files/info/open-gov-min-standards-final.pdf>.

⁸ *See* 43 C.F.R. § 2.67; C.F.R. § 9301.4. *Cf.* Justice Department, “Freedom of Information Act Regulations,” proposed rule, March 21, 2011, 76 F.R. 15236 (“Each component is responsible for determining which of its records are required to be made publicly available, as well as identifying additional records of interest to the public that are appropriate for public disclosure, and for posting such records.”).

⁹ Barack Obama, Presidential Memorandum, “Freedom of Information Act,” The White House, Jan. 21, 2009, *available at* http://www.whitehouse.gov/the_press_office/FreedomofInformationAct (“[Agencies] should not wait for specific requests from the public. All agencies should use modern technology to inform citizens about what is known and done by their Government.”)

c. Post records released in response to FOIA requests

IMLS should adopt a policy to post online all records released in response to FOIA requests. The records released under FOIA are an ongoing category of information that some public stakeholders have expressed interest in having disclosed.

The E-FOIA Act of 1996 mandated agencies to post online any information that has been released in response to a FOIA request and is “likely to become the subject of subsequent requests.”¹⁰ More recently, some agencies have adopted the best practice of posting *all* released records, which makes more information available to the public and eliminates the need for the agency to evaluate each request to determine whether it is likely to become the subject of subsequent requests. The Air Force¹¹ and the Office of the Secretary of Defense and Joint Staff have adopted this policy.¹² Additionally, the multi-agency portal, FOIAonline,¹³ offers the functionality for agencies to post released records.

Recommendation: Revise the proposed regulations at § 1184.2(b) to add, “IMLS will post all records released in response to FOIA requests in a searchable format on the agency website.”

Implementation suggestion: To protect privacy, IMLS could exclude first-person requests for personal information, such as those made jointly under the Privacy Act.¹⁴

d. Publish online indexes of disclosed records

IMLS should adopt a policy to publish online its indexes of disclosed records. The E-FOIA Act required agencies to publish indexes of records that agencies have made available for public inspection.¹⁵ The most effective way to publish such indexes is on the agency website. For example, the National Archives and Records Administration (NARA) has adopted this policy.¹⁶

¹⁰ Electronic Freedom of Information Act Amendments of 1996, P.L. 104-231, at Sec. 4; 5 U.S.C. § 552(a)(2)(D).

¹¹ Air Force Manual, “Freedom of Information Act Program,” sec. C2.1.2.4.3.1, Oct. 21, 2010, *available at* <http://www.foia.af.mil/shared/media/document/AFD-070702-060.pdf> (“The FOIA RSC will consider any requested record that has been previously partially or fully released as a frequently requested record ... and make it publicly available electronically ... FOIA managers will ensure that there is no personally identifiable information (PII) posted to the e-Reading Room even if it is fully released, i.e., first or third party request”).

¹² U.S. Government Accountability Office, “Freedom of Information Act: Additional Actions Can Strengthen Agency Efforts to Improve Management,” GAO-12-828, July 31, 2012, pp. 24-25.

¹³ <http://foiaonline.regulations.gov/>.

¹⁴ 5 U.S.C. § 552a. *Cf.* 5 U.S.C. § 552(a)(2) (“To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes ... copies of records referred to in subparagraph (D)”).

¹⁵ Electronic Freedom of Information Act Amendments of 1996, P.L. 104-231, at Sec. 4; 5 U.S.C. § 552(a)(2)(E).

¹⁶ 36 C.F.R. § 1250.12 (“NARA makes available for public inspection and copying the following materials described in subsection (a)(2) of the FOIA: ... An index, updated quarterly, to these materials. ... Any of this material that was created after October 31, 1996, will also be placed on NARA's web site at http://www.archives.gov/research_room/foia_reading_room/foia_reading_room.html”).

Recommendation: Revise the proposed regulations at § 1184.2(b) to add, “IMLS will publish on the IMLS’s Web site current indexes of information made available for public inspection under 5 U.S.C. 552(a)(2) of the FOIA.”

2. Improve the acknowledgment of requests

a. Acknowledge requests as soon as practicable

IMLS should adopt a policy that the agency will acknowledge all requests as soon as practicable. Promptly acknowledging requests assures requesters that their request has been properly received. In addition, acknowledgement letters can provide requesters with important information, such as the tracking number for their request and contact information for questions on processing. For instance, the Consumer Financial Protection Bureau (CFPB) FOIA regulations specify that the agency will send an acknowledgement within ten days of receipt.¹⁷

Recommendation: Revise the proposed regulations at § 1184.5(a) to add, “IMLS will provide an acknowledgment letter to each requester as soon as possible.”

Implementation suggestion: IMLS should provide an automated acknowledgment when possible (e.g., for requests received through the agency website or by email). Several agencies have adopted this practice, including the State Department, General Services Administration (GSA)¹⁸, and the Office of Inspector General at the Department of the Interior¹⁹.

b. Provide information about the agency’s FOIA Public Liaison

IMLS should adopt a policy to notify requesters of the availability of its FOIA Public Liaison when acknowledging requests.

In the OPEN Government Act, Congress directed each agency to “make available its FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and the agency.”²⁰ Making the FOIA Public Liaison easily available to requesters can help address questions or misunderstandings which might otherwise lead to disputes.

¹⁷ 12 C.F.R. § 1070.18

¹⁸ U.S. General Services Administration, “FOIA Review and Plan in Response to Executive Order 13392,” Nov. 1, 2006, p. 4, available at http://www.gsa.gov/graphics/staffoffices/GSA_FOIA_Review_and_Plan_v3.doc.

¹⁹ Department of the Interior Office of Inspector General, “Processing a FOIA Request,” March 25, 2013, available at <http://www.doi.gov/oig/foia/Processing-a-FOIA-Request.cfm>.

²⁰ P. L. 110-175, at Sec. 6; 5 U.S.C. § 552(a)(6)(B)(ii) (“To aid the requester, each agency shall make available its FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and the agency.”); also see 5 U.S.C. § 552(l).

Recommendation: Revise the proposed regulations at § 1184.5(a) to add, “IMLS will provide contact information of the FOIA Public Liaison in the initial acknowledgment letter to the FOIA requester.”

3. Clarify fees and fee waivers

a. Maintain a database of waivers granted by the agency to consult for future waiver requests

IMLS should maintain a database of fee waivers that it has granted to requesters. Many requesters have expressed frustration with the complicated fee provisions of the FOIA. In particular, attaining fee waivers has been difficult for eligible requesters. Agency adjudication of fee waiver requests – even where the same requester has previously been granted a fee waiver – can be lengthy, complex, and result in different outcomes at different times.

Maintaining a database of fee waivers would allow IMLS to mitigate these difficulties by consulting the database when considering future waiver requests and treating requesters previously granted a waiver with a presumption of eligibility in future waiver requests.

Recommendation: Revise the proposed regulations at § 1184.7(e) to add, “To streamline the fee waiver process, IMLS will maintain a database of fee waivers granted by the agency and will consult the database when reviewing future requests for fee waivers, with a presumption that requesters previously granted waivers will be eligible for future waivers.”

Implementation suggestion: When established, IMLS should make its database of fee waivers available for other agencies to consult. If available, IMLS should consult similar databases of other agencies when processing a request for a fee waiver.

b. Adopt a reasonable threshold for minimum fee charges

IMLS should revise the proposed regulations to provide that it will not charge a fee if the total fee is \$50 or less. Recouping charges for producing small FOIA requests is uneconomical and may contribute to processing delays. Conversely, not charging a fee if processing the request costs the agency less than \$50 would streamline FOIA processing.

The Department of the Interior will not charge the requester if the fee would be less than \$50.²¹

Recommendation: Revise the proposed regulations at § 1184.7(f) to add, “IMLS will not charge a fee if the fee for processing the request would be less than \$50.”

²¹ 43 C.F.R. § 2.49 (a)(1)

4. Improve communication with the requester

a. *Seek clarification as necessary*

IMLS should adopt a policy that the agency will contact the requester to seek clarification if the agency is unclear as to the scope of the request. An agency's interpretation of the particular scope of a FOIA request, and its determinations regarding exactly which information falls within it, are vitally important aspects of FOIA administration. In order to make sure that IMLS does not unduly limit the records found responsive to FOIA requests, the agency should make sure that it carefully reads and fairly interprets the terms of the FOIA requests that it receives and contacts the requester for clarification if needed. Doing so can avoid disputes.

For example, at the Nuclear Regulatory Commission (NRC), FOIA officers are instructed to “make every effort to clarify the scope of the request before forwarding the request to the office FOIA coordinators.”²²

Recommendation: Revise the proposed regulations at § 1184.5 to add, “If there is any uncertainty, IMLS will attempt to communicate with the requester to clarify the scope of his or her FOIA request.”

b. *Provide estimated time to complete the request and opportunities to reformulate*

IMLS should adopt a policy that the agency, as soon as practicable, will notify requesters of the estimated time to complete the request and to which track the agency has assigned the request, if applicable, and provide requesters with the opportunity to reformulate the request if they so choose.

In the OPEN Government Act, Congress directed agencies to provide requesters with an estimated date of completion for processing the request.²³ IMLS should communicate that estimate to requesters as early as possible. In addition, IMLS should notify requesters that, if they would prefer to complete processing sooner, they may be able to shorten the time necessary to complete the request by amending their request to limit the scope.

Several agencies have adopted this practice: the Nuclear Regulatory Commission,²⁴ Environmental Protection Agency,²⁵ and Occupational Safety and Health Review Commission.²⁶

²² Nuclear Regulatory Commission FOIA/Privacy Team guidance, available at <http://pbadupws.nrc.gov/docs/ML0932/ML093230619.pdf>.

²³ P. L. 110-175, at Sec. 7; 5 U.S.C. § 552(a)(7)(B) (“Each agency shall ... establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including ... an estimated date on which the agency will complete action on the request.”).

²⁴ 10 C.F.R. § 9.25(c).

Recommendation: Revise the proposed regulations at § 1184.5 to add, “IMLS will provide the requester with an estimate of how long the request is likely to take to process and give the requester an opportunity to reformulate the request, at the requester’s option.”

c. Inform requesters of status updates

IMLS should take advantage of technology in order to provide automated updates on the status of FOIA requests on the agency’s website. Automated status updates can reduce the time consumed by communicating such basic information to requestors and allow FOIA personnel to spend more time processing requests.

Agencies implementing this practice include the General Services Administration,²⁷ Department of the Interior,²⁸ Federal Labor Relations Authority (FLRA),²⁹ and Federal Housing Finance Agency (FHFA).³⁰ Those who file their FOIA requests with the FLRA can use FOIAonline to track the status of their requests.³¹ Several agencies, such as FHFA, provide tracking systems on their own websites. The information provided to the requester through these tracking systems usually includes important information on the status of requests.³²

Recommendation: Revise the proposed regulations at § 1184.5 to add, “IMLS will provide automated updates on the status of FOIA requests on the agency’s website.”

²⁵ 40 C.F.R. § 2.104(c) (“The Agency will advise you of the processing track in which your request has been placed and of the limits of the different processing tracks...If your request is placed in a slower track, the Agency will contact you either by telephone or by letter”).

²⁶ 29 C.F.R § 2201.6(d)(3).

²⁷ GSA, 2013 Chief FOIA Officer Report, March 2013, Page 8, (“GSA FOIA website allows users to track and obtain the status of their FOIA requests. The system in place is not currently designed with real time status information, but GSA is considering ways to improve such information”), available at <http://www.gsa.gov/portal/getMediaData?mediaId=166295>.

²⁸ Department of Interior, 2013 Chief FOIA Officer Report. March 2013. Page 10 (“FOIA requesters can now retrieve personalized results, using their FOIA tracking number, in real time. The results include the request date, receipt date, processing track, request status, and fee category”), available at http://www.doi.gov/foia/upload/2013-DOI-CFO-Report_posted.pdf.

²⁹ Federal Labor Relations Authority, 2013 Chief FOIA Officer Report. March 2013. Page 5 (“Using FOIAonline, a requester can determine: (1) if the request has been submitted; (2) if the request is being evaluated to determine whether it is perfected; (3) if the request has been assigned; (4) if the request is being processed; and (5) if the request is closed”), available at http://www.flra.gov/webfm_send/687.

³⁰ Federal Housing Finance Agency, 2013 Chief FOIA Officer Report. March 11, 2013. Page 8 (“The information provided to the requester through the tracking system is as follows: Received date, Assigned, Perfected, On hold for information/clarification, Request for documents sent, Closed, Fees due”), available at <http://www.fhfa.gov/webfiles/25017/Final%20FHFA%202013%20Chief%20FOIA%20Officers%20Report.pdf>.

³¹ Federal Labor Relations Authority, 2013 Chief FOIA Officer Report. March 2013. Page 5.

³² Federal Housing Finance Agency, 2013 Chief FOIA Officer Report. March 11, 2013. Page 8.

d. Communicate with requesters by email where appropriate

IMLS should adopt a policy that it will communicate with requesters by email where appropriate. Digital communications is changing the way government connects with citizens. IMLS should take advantage of the information technology to deliver fast and effective communications with the public. Email communication can also result in significant cost savings for the agency.

The latest Chief FOIA Officer Report at the United States Trade Representative (USTR) emphasized that the agency generally transmits FOIA responses via email.³³

Recommendation: Revise the proposed regulations at § 1184.2 to add, “IMLS will generally communicate with the requester by email, unless he or she specifies otherwise.”

e. Use plain language in all communications with requesters

IMLS should adopt a policy that all written communications with requesters will use plain language.

Citizens deserve clear communications from the government. All IMLS communications with the requesters should be easy to read, understand, and use.

The Plain Writing Act of 2010 directs agencies to use “writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience.”³⁴

Recommendation: Revise the proposed regulations at § 1184.2 to “IMLS will use plain language in all communications with requesters.”

f. Notify requesters when requests are referred

IMLS should adopt a policy that it will notify requesters when it refers requests to another agency.

When searching for records requested under FOIA, it is not uncommon for an agency to locate a responsive document that originated outside of the agency. If the FOIA request has been referred by IMLS to another agency, the requester needs to know where it has been referred.

³³ USTR Chief FOIA Officer Annual Report, 2013, March 11, 2013, *available at* <http://www.ustr.gov/sites/default/files/USTR%20CHIEF%20FOIA%20OFFICER%20Report%202012.pdf>

³⁴ P. L. 111-274 (directing agencies to use “writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience”); *also see* Janet Reno, “The Freedom of Information Act,” Office of the Attorney General, Oct. 4, 1993, *available at* http://www.justice.gov/oip/foia_updates/Vol_XIV_3/page3.htm (announcing a “comprehensive review of all standard FOIA forms and correspondence ... for their correctness, completeness, consistency, and particularly for their use of clear language”).

According to CFPB's FOIA regulations, CFPB "will notify the requester of the referral and inform the requester of the name of each agency to which the request has been referred."³⁵

Recommendation: Revise the proposed regulations at § 1184.5 to add, "Whenever IMLS refers all or any part of the responsibility for responding to a request to another agency, IMLS will notify the requester of the referral, provide the name of the agency to which the referral was directed, and include that agency's FOIA contact information."³⁶

5. Apply the presumption of openness

IMLS should adopt a policy that the agency will apply a presumption of openness in processing requests, will only withhold information if it reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions or if disclosure is prohibited by law.

Attorney General Holder's FOIA guidelines directed agencies to make discretionary disclosures of information. Specifically, the guidelines provide that "the Department of Justice will defend a denial of a FOIA request only if (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or (2) disclosure is prohibited by law."³⁷ Applying this "foreseeable harm standard" helps to ensure that agencies do not withhold information improperly and uphold the FOIA's spirit of transparency while protecting privacy rights and national security information.

Recommendation: Revise the proposed regulations at § 1184.5(c) to add, "IMLS will apply a presumption of openness when processing requests and will only withhold requested information if it reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions or if disclosure is prohibited by law. Before withholding information, IMLS will conduct a foreseeable harm analysis, which clearly identifies the harm that would occur with disclosure."

³⁵ 12 C.F.R. § 1070.15(d)

³⁶ See U.S. Department of Justice Office of Information Policy, "Referrals, Consultations, and Coordination: Procedures for Processing Records When Another Agency or Entity Has an Interest in Them," Dec. 5, 2011, available at <http://www.justice.gov/oip/foiapost/2011foiapost42.html>.

³⁷ Eric Holder, "The Freedom of Information Act (FOIA)," Office of the Attorney General, March 19, 2009, available at <http://www.justice.gov/ag/foia-memo-march2009.pdf> ("I strongly encourage agencies to make discretionary disclosures of information ... [T]he Department of Justice will defend a denial of a FOIA request only if (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or (2) disclosure is prohibited by law.").

6. Notify requesters of their right to seek assistance from the agency's FOIA Public Liaison

IMLS should adopt a policy to notify requesters of the availability of its FOIA Public Liaison in initial determination letters. In the OPEN Government Act, Congress directed each agency to “make available its FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and the agency.”³⁸ Making the FOIA Public Liaison easily available to requesters can help address questions or misunderstandings which might otherwise lead to disputes.

Recommendation: Revise the proposed regulations at § 1184.5 to add, “IMLS will provide the requester with the name and contact information of the FOIA Public Liaison in an initial acknowledgment letter.”

7. Improve administrative appeals

a. Provide adequate time limits for requesters to submit appeals

IMLS should provide a minimum of 60 days for requesters to submit administrative appeals. The proposed regulations provide only 30 days, which may not enough time for a requester to gather all the facts relevant to the request and prepare any arguments they wish to make in the appeal.

SIGAR’s FOIA regulations state that appeals must be delivered in writing within 60 days of the date of the decision.³⁹

Recommendation: Revise the proposed regulations at § 1184.6(a) to strike “thirty (30) calendar days” and insert “sixty (60) calendar days.”

b. Provide a website and/or email address for submitting appeals

IMLS should provide that the requesters may submit their administrative appeals by email or through the IMLS website. Under the proposed regulations, requesters may use email or the agency website to submitting FOIA requests, but may only submit appeals by mail or fax. Allowing requesters submit their administrative appeals by email or on the agency’s website is faster, cheaper, and more convenient for the public and the agency employees processing the appeals.

Several agencies, including the Special Inspector General for Afghanistan Reconstruction, allow the FOIA requesters to submit their appeals by email.⁴⁰ FOIAonline also offers the functionality for requesters to submit appeals through the website.

³⁸ P. L. 110-175, at Sec. 6; 5 U.S.C. § 552(a)(6)(B)(ii) (“To aid the requester, each agency shall make available its FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and the agency.”); *also see* 5 U.S.C. § 552(l).

³⁹ 5 C.F.R. § 9301.6(d)

Recommendation: Revise the proposed regulations at § 1184.6(a) to strike the final two sentences and insert, “Your appeal may be submitted in writing, by fax, email, or on IMLS’ website,” and to provide appropriate addresses.

c. Notify requesters of dispute resolution services in appeal determinations

IMLS should adopt a policy to notify requesters of dispute resolution services in appeal determination letters.

The OPEN Government Act of 2007 created an Office of Government Information Services (OGIS) within the National Archives and Records Administration (NARA). One of the OGIS mission statements is to mediate disputes between FOIA requesters and government agencies as a nonexclusive alternative to litigation.⁴¹

SIGAR’s FOIA regulations state that the response to an appeal letter will inform the requester about the OGIS mediation services.⁴²

Recommendation: Revise the proposed regulations at § 1184.6 to add, “IMLS will provide the requester with the name and contact information of the Office of Government Information Services in an appeal determination letter.”

8. Provide information about dispute resolution services

IMLS should describe how requesters may access the FOIA Public Liaison and OGIS dispute resolution services.

In the OPEN Government Act, Congress created OGIS within the National Archives and Records Administration and directed it to offer dispute resolution services for FOIA requesters as a non-exclusive alternative to litigation.⁴³ These services can facilitate communication between requesters and agencies and may reduce litigation under FOIA. In July 2010, Office of Information Policy (OIP) issued guidance calling on agencies to “ensure that all requesters know of this service.”⁴⁴

⁴⁰ 5 C.F.R. § 9301.6(d)

⁴¹ P. L. 110-175, at Sec. 10; 5 U.S.C. § 552(h)(3).

⁴² 5 C.F.R. § 9301.6 (d)(3) (“Response to an appeal will advise the requester that the 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation”).

⁴³ P. L. 110-175, at Sec. 10; 5 U.S.C. § 552(h)(3).

⁴⁴ U.S. Department of Justice Office of Information Policy, “OIP Guidance: Notifying Requesters of the Mediation Services Offered by OGIS,” *FOIA Post*, July 9, 2010, available at <http://www.justice.gov/oip/foiapost/2010foiapost21.htm>.

Recommendation: Revise the proposed regulations to add a new subsection entitled, “How can I resolve disputes with my request?” which describe how requesters may access the FOIA Public Liaison and OGIS dispute resolution services.

Implementation suggestion: Include information about OGIS dispute resolution services on the IMLS FOIA website.

Conclusion

The Center for Effective Government appreciates the opportunity to comment on IMLS’s proposed FOIA regulations. We hope you take our recommendations into consideration. If you have questions about our comments or want to discuss the issues further, please feel free to contact us.

Sincerely,



Sean Moulton
Director, Open Government Policy



Gavin R. Baker
Open Government Policy Analyst