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TESTIMONY OF ALINA M. SEMO

DIRECTOR OF

THE OFFICE OF GOVERNMENT INFORMATION SERVICES

BEFORE THE SENATE COMMITTEE ON THE JUDICIARY

ON

**“The Freedom of Information Act: Examining the Administration’s
Progress on Reforms and Looking Ahead”**

March 13, 2018

Good morning Chairman Grassley, Ranking Member Feinstein, and members of the Committee. I am Alina Semo, and I was appointed as the Director of the Office of Government Information (OGIS) by the Archivist of the United States, David S. Ferriero, in November 2016.

Thank you for the opportunity to appear before you during Sunshine Week to discuss the administration’s progress on reforms and looking ahead. I want to begin by thanking you for your continued attention to the Freedom of Information Act (FOIA), and for this Committee’s bipartisan action to strengthen the law by passing the FOIA Improvement Act of 2016. I particularly appreciate your efforts to increase the visibility of dispute resolution throughout the FOIA process, to highlight OGIS’s crucial role in improving compliance with the statute, and to improve our ability to share our frank observations about the FOIA process with our varied stakeholders.

Thanks to the enhanced independence granted to OGIS by the FOIA Improvement Act of 2016, the views expressed in my testimony are those of OGIS, and do not necessarily represent the views of the President.

I am honored that the Archivist of the United States selected me for this position at such a critical time in the FOIA landscape. OGIS's success would not be possible without his unwavering support, as well as the support of the National Archives' Executive Leadership Team. I am also grateful for the leadership that my predecessors, Miriam Nisbet and James Holzer, provided to OGIS since 2009. I intend to continue on the successful path that they have established for the office.

As the Federal FOIA Ombudsman, OGIS resolves federal FOIA disputes, identifies methods to improve compliance with the statute, and educates our stakeholders about the FOIA process. I will address our work in each area in turn, with a focus on providing updates since the passage of the FOIA Improvement Act of 2016.

Dispute Resolution

Since we opened our doors in September 2009, OGIS has built a robust [mediation program](#) that provides valuable assistance to both FOIA requesters and agencies. The FOIA Improvement Act of 2016 mandated that Federal agencies alert FOIA requesters to OGIS's dispute resolution services at various points throughout the administrative process; this increased our visibility in the FOIA process and increased demand for our services. In the Fiscal Quarter immediately following the enactment of the FOIA Improvement Act, we experienced a 142 percent spike in requests for our services compared with the same period in Fiscal Year (FY) 2015. Throughout most of [FY 2017](#), demand for our services continued to increase, leading to a 160 percent overall increase in our FY 2017 caseload compared with FY 2016. We have been challenged to keep up with the influx in new cases. Nevertheless, we are grateful for our heightened visibility in the FOIA process, which has given us additional insight into how agencies interact with requesters, particularly in the early stages of the FOIA process, and has enabled us to develop new relationships with agencies that may not process a large volume of requests each year.

To address the increased influx of requests for our assistance, we adopted an “all-hands-on-deck” approach, streamlined our internal processes, and more than doubled the number of cases that we closed in FY 2017 compared with FY 2016. Despite these efforts, we have not been able to respond as quickly as we would like to requesters who seek our assistance with more complex matters. We continue to look for strategies and additional efficiencies that will help us reduce our backlog of more complex requests.

The FOIA Improvement Act of 2016 also brought increased attention to the role of FOIA Public Liaisons (FPLs) in resolving FOIA disputes and directed us to report to Congress annually regarding the frequency of their use. We collaborated with the U.S. Department of Justice’s Office of Information Policy (OIP) to collect, through Chief FOIA Officer Reports, agency estimates of how often requesters contacted the FPLs at agencies that processed more than 50 FOIA requests annually. Our analysis of the agencies’ responses shows a large range in the numbers reported by each agency. Generally, agencies that processed fewer requests each year reported fewer contacts with the agencies’ FPLs. We also noted that as many as 40 percent of the agencies that responded to the question reported that the FPL is contacted an average of less than once a month.

OGIS has continually recognized a need for specific training that arms agency FOIA professionals, including FOIA Public Liaisons, with the tools they need to prevent and resolve disputes at the agency level. In 2010, OGIS launched the [*Dispute Resolution Skills for FOIA Professionals*](#) training program. We presented our cross-agency training program twice in FY 2017. The October 2016 and April 2017 sessions filled up within 24 hours of their announcement and received high marks and positive feedback from the attendees. In FY 2017, OGIS conducted agency-specific dispute resolution training sessions at three agencies: NARA, the U.S. Department of State, and U.S. Citizenship and Immigration Services. We continue to work with agencies to provide tailored training that addresses their individual needs. We are

also developing a new training program to reinforce and expand on communication skills for agency FOIA professionals.

Compliance

The FOIA Improvement Act of 2016 also highlighted OGIS's critical role in improving compliance with the statute. Our approach to [compliance](#) has evolved significantly over the last few years, thanks in no small part to the National Archives' support and commitment to ensuring that OGIS has sufficient support—both in the form of staff and training opportunities—to meet this mandate. Currently, we provide agency-specific assistance and recommendations through our agency assessment program and comments on FOIA regulations. We also identify and address government-wide compliance issues using [responses to self-assessment questions](#).

Our compliance team has developed a specific [agency assessment methodology](#) that relies on generally accepted government auditing standards and our staff's knowledge of best practices to identify issues in the administration of FOIA and make tailored recommendations. Our compliance assessment process recognizes that there is no one-size-fits-all approach to administering FOIA—each agency's records are unique and as such, management of the FOIA process differs. Nevertheless, we have observed that successful FOIA programs share three general characteristics: they manage their resources appropriately; they use technology effectively; and they communicate well with requesters.

In FY 2017 we published assessments of the FOIA programs at [Immigration and Customs Enforcement](#) (ICE), [U.S. Immigration and Citizenship Services](#) (USCIS), and the [Consumer Financial Protection Bureau](#) (CFPB). While these assessments were specific to those agencies, we noted particular trends in our findings. In the area of management, our findings indicated that effective, efficient, and successful FOIA programs generally have strong leadership support, and use management techniques that ensure

staff have a clear understanding of their roles and responsibilities. Our findings have also continued to show the value of investments in technology, as well as the importance of training FOIA staff to use available technology tools and sufficient IT support effectively and efficiently. Finally, we have continued to observe that good communication helps ensure a smooth FOIA process—and helps to prevent disputes that may otherwise lead to litigation.

The tailored recommendations we include in our assessment reports are intended to help the agency improve its FOIA performance. One hundred and twenty days after our assessment reports are published, we initiate a process to follow-up with the agencies to determine what steps they have taken to address our recommendations. The response from agencies that have gone through our process has been quite positive, with participating agencies addressing more than 95 percent of our recommendations.

In addition to publishing our assessment reports of ICE and CFPB this past year, we also published an assessment of the office of the [Chief FOIA Officer at the Department of Homeland Security](#) (DHS). We found that the DHS Chief Privacy Officer, who also serves as the Department's Chief FOIA Officer, met his statutory obligation to support implementation of the FOIA by providing targeted services to component agencies, including implementing a department-wide FOIA processing and tracking system; assisting with processing requests from component agency backlogs; and providing guidance on FOIA policy issues.

By requiring agencies to update FOIA regulations, the FOIA Improvement Act of 2016 also provided OGIS with a fresh opportunity to review and provide agency-specific suggestions to improve compliance with the law. OGIS has always considered reviewing agency FOIA regulations an important part of our review of policies and procedures. Since passage of the Act, OGIS has reviewed regulations published in the Federal Register by 57 departments and agencies. We look forward to reviewing updated regulations for the approximately 52 percent of agencies that have yet to publish proposals.

With regard to OGIS's efforts to review policies and procedures and identify methods to improve compliance, I would also like to note that our compliance program hit a new milestone in FY 2017 thanks to successful collaboration with NARA's Chief Records Officer of the United States (CRO). In FY 2017 OGIS was able to collect self-reported data on FOIA implementation from almost every agency subject to FOIA. Our partnership with the CRO to include questions about FOIA implementation in the annual [Records Management Self-Assessment](#) (RMSA) enabled us to leverage the CRO's experience and expertise in conducting self-assessments and expand our understanding of FOIA implementation across the government. The responses to the questions in the 2016 RMSA survey created a reference point for our understanding of the relationship between FOIA Officers and Federal Agency Records Officers. It also provided insight regarding the systems agencies do—or do not—have in place to identify information that could be proactively released. The questions and survey responses to the 2016 RMSA survey have also furthered our perspectives on observations in our agency compliance reports regarding program management, the use of technology, and communication with requesters.

FOIA Advisory Committee

OGIS has also been learning more about the implementation of FOIA across the government and trying to drive improvements to the process through our work with the FOIA Advisory Committee, which I chair and OGIS administratively supports. The [Federal FOIA Advisory Committee](#), established by NARA in 2014, brings together FOIA experts from inside and outside of government to discuss the greatest challenges in the administration of FOIA and identify consensus solutions. The Committee reports to the Archivist of the United States. During its [current term](#), the Committee has focused its efforts on improving proactive disclosure and the accessibility of records for people with disabilities, improving FOIA searches, and identifying practices that promote the efficient use of resources. At our most recent meeting this past [January](#), the Committee unanimously supported more than half a dozen

recommendations for specific actions and a number of best practices to address these issues. The Committee is expected to complete its work and transmit its final report and recommendations to the Archivist of the United States at its final meeting of this term on April 17, 2018.

Chief FOIA Officers Council

In the past year, OGIS found our position as co-chair of the [Chief FOIA Officers Council](#) very useful for addressing a government-wide issue we first identified through our dispute resolution program. As I indicated previously, OGIS experienced an immediate and sustained increase in demand for our services after the enactment of the FOIA Improvement Act. In reviewing materials submitted to us, we noted that many requesters seemed confused about who they needed to contact to take the next step in the process, and that we were receiving a large amount of material intended for agencies. We identified the source of the confusion as letters from agencies that made it hard for requesters to locate the agency's contact information. We addressed some of these confusing letters directly with agencies, and we worked with OIP to develop template language that agencies can use to notify requesters of dispute resolution services from FOIA Public Liaisons and OGIS. We worked with OIP to develop an agenda for the 2017 meeting of the Chief FOIA Officers Council to discuss and receive feedback on the template language, and to highlight good customer service practices. Following the meeting, both OGIS and OIP posted the template language for agency response letters on our respective [websites](#), and we have seen a decrease in misdirected material sent to our office. We look forward to continuing our successful collaboration with OIP with regard to the Council.

OGIS Outreach

As the FOIA Ombudsman, OGIS takes very seriously its responsibility to educate stakeholders about the process and promote understanding of the various viewpoints among our broad range of stakeholders

inside and outside of government. In FY 2017 OGIS staff were invited to speak at training sessions and events hosted by federal agencies, academic institutions, and professional organizations. We have also maintained an active social media presence, including our blog, titled [The FOIA Ombudsman](#), and our Twitter account, [@FOIA_Ombuds](#). This past year, we re-launched our [website](#) on the NARA platform; our refreshed website helps the public understand our position within the National Archives, includes enhanced navigation, and is optimized for mobile devices. OGIS also hosted our [second annual Sunshine Week celebration](#) in NARA's William G. McGowan Theater and our [first annual Open Meeting](#), which gave the public an opportunity to submit oral and written comments about OGIS's activities. We look forward to continuing these efforts in the coming year, as we look for new ways to educate the public about the FOIA process.

Congress has intended for OGIS to play an important role in the administration of FOIA across the government. Early on, we realized that in order to effectively resolve disputes and assess compliance, we need to be able to freely discuss FOIA requests with agency FOIA officers and [review parts of agency administrative files](#) as part of our compliance reviews. Our access to these records can be complicated, however, because the records are generally kept in a System of Records that is protected under the Privacy Act, meaning that to facilitate access, we must obtain the requester's express consent or the agency must have a routine use in place for OGIS. In 2015, OGIS's former Deputy Director (then Acting Director) Nikki Gramian, [testified](#) before this Committee that the lack of routine uses at agencies continued to create logistical challenges for both our mediation and compliance programs. Following her testimony, OGIS launched an extensive effort to encourage additional agencies to publish a routine use. We wrote to the Chief FOIA Officer and Chief Privacy Officer at every agency that did not yet have a System of Records Notice (SORN) and requested that they formally respond to our request. We published all of this correspondence and agency responses on our [website](#). The good news is that 13 of the 15 Cabinet-

level agencies have complied with our request. Despite these efforts, however, only about 30 percent of agencies that are subject to FOIA have published a routine use for OGIS. The ability for OGIS to gain access to these files is now even more important because of the increase in our caseload, and because we are opening cases with agencies that we have not previously encountered. We believe it would be appropriate to address this issue through legislation, such as a possible amendment to the FOIA.

The FOIA Improvement Act of 2016 raised OGIS's profile and improved our ability to understand potential issues with the implementation of FOIA across the government. The amendments also provided us with a greater ability to share our frank observations about the administration of FOIA and ideas for improvement with our stakeholders. While our new visibility in the process has created challenges, our greater exposure to agency interactions with requesters significantly improves our understanding of the implementation of FOIA across the government—including potential compliance issues. We are also proud of the substantial progress we have made in reviewing policies and procedures. OGIS looks forward to continuing to identify and amplify strategies to improve compliance through our agency assessment program, our comments on agency FOIA regulations, and through our work with the FOIA Advisory Committee and Chief FOIA Officers Council.

I appreciate the opportunity to appear before this Committee and thank you for the support that you have shown to the Office of Government Information Services. I look forward to answering any questions you may have.
