

January 11, 2013

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Dear Ms. Pustay,

As a member of the public who uses the Freedom of Information Act in scholarly endeavors and teaches FOIA and freedom of information in a variety of courses, I write to share suggestions in response to the Office of Information Policy's (OIP) January 22, 2013, Requester Roundtable meeting on *FOIA Libraries: Maximizing Usefulness from the Requester*. In proposing the following suggestions, I am not certain of DOJ's range of authority in implementing recommendations government-wide; from a requestor perspective, I hope there is a commitment to investigating ideas generated during the Roundtable sessions:

- 1). The work of the National Declassification Center (NDC) and agencies in releasing FOIA-generated records are of great importance to the public in terms of access to history of government actions and policies. However, it is often confusing and time consuming for those in academia and the public to search numerous places for materials historically and currently released under FOIA.

For example, in addition to NDC, agency reading rooms, and recent releases of materials residing at presidential libraries through the National Archives and Records Administration Web site, a researcher *must also* consult subscription library databases such as the *Declassified Documents Reference Service* and *Digital National Security Archive*, as well as Web sites such as cryptome, MuckRock, and Stanford University, Social Sciences Resource Group, and other sources for materials released under FOIA.

This situation leads me to suggest that Clinton Executive Order 12958 (1995), which mandated development of a database for declassified records, be adopted for records released under FOIA:

Sec. 3.8. Declassification Database. (a) The Archivist in conjunction with the Director of the Information Security Oversight Office and those agencies that originate classified information shall establish a Government wide database of information that has been declassified. The Archivist shall also explore other possible uses of technology to facilitate the declassification process.

FOIAonline (<http://FOIAonline.Regulations.gov>) is a solid step forward in the realization of such a database, but it is currently limited. Is there currently a plan to expand federal agency participation in *FOIAonline* as well as its historical coverage?

Institution of such a FOIA database (retroactively if possible for those requests generally released under FOIA since its enactment), would be an asset in centralizing materials released under FOIA, including those records released through declassification. Such a database would expand on the philosophy of a public right to know and act to defragment understanding of history and U.S. federal agency policy. Having access to a federal database would also take public information out of the control of commercial publishers, as the subscription databases I mention here are subject to license agreements and contracts signed by libraries for their researchers, thus limiting general public access to government produced information. Materials released under FOIA and declassified are in essence federal publications, and should be treated in the same way as the Government Printing Office was thought of when it was established in 1861 to disseminate federal information: “for the information which it affords must always control, to some extent, the action of those engaged in it. Without it, how can gentlemen intelligently frame their bills, draw up their reports, or even vote understandingly?” (Congressman Gurley, March 1861).

2). My second issue concerns enforcement and regulatory oversight authority of the Office of Government Information Service (OGIS). Perhaps due to the constraints of the P.L. 110-81 (“Honest Leadership and Open Government Act of 2007”) that places OGIS in a mediation role, the OGIS as the federal FOIA Ombudsman doesn’t have the enforcement authority to require agencies to respond to and comply with FOIA requests. Based on my experience with OGIS staff, I can verify the outstanding job in outreach and communication that exists between requestor and agency. However, two outstanding requests I submitted almost three years ago have gone unanswered by the Department of Defense and Department of Education (an appeal).

On my behalf, OGIS intervened several times with both agencies; in the first case, the DoD FOIA officer, who I spoke with several times only because OGIS was able to track down his contact info, was dependent on response from SOUTHCOM who has direct access to the information. This leads me to ask that if a FOIA officer receives no response or an incomplete response from within their own agency, how can OGIS possibly mediate? How can requestors proceed?

In the second case, after receiving a redacted in-toto four page document from Department of Education that clearly didn’t answer my original FOIA request, I filed an appeal. After almost four month duration, I contacted Department of Ed as to the status of the appeal. I was informed by the FOIA officer that he thought my appeal was “complete.” Far from it, and now almost three years after my original FOIA request was submitted, I am still no further along in understanding how the Department of Education assesses capitalization of Stafford student loans. I have lots of questions, including why this information is not freely available to borrowers as an element of truth-in-lending, but more specifically, why the Department has not responded to an appeal in a timely fashion to either me as requestor or the OGIS as mediator?

Therefore, I recommend that OGIS should be given regulatory “teeth” to mandate response, completeness of requests, critique regulatory compliance and use of exemptions, and offer guidance to FOIA requestors in terms of their options in pursuing a request and an appeal. In addition, I recommend that

FOIA officers are provided further training so they are familiar with their responsibility in communicating with requestors under the law.

Many requestors, including myself, are not financially equipped to take agencies to court for release for records. There must be another path open to OGIS that assists requestors and supplements the mediation approach. Perhaps one road might be for OGIS to work more closely with DOJ in terms of training and support?

3). I appeal to the Department of Justice to re-examine fee waiver status. As an academic, I utilize FOIA materials in the courses I teach. This kind of public transmission and sharing of records should be taken into account by agencies – FOIA officers – in their fee waiver decisions. Although I blog and share materials I receive under FOIA, my primary focus is sharing records with students. I can't stress the importance of primary materials in research and teaching. I am not in the media business nor am I a journalist. I am a scholar and an educator. Dissemination of materials released under FOIA by academics to students should be considered reason enough for a fee waiver as it is in the ultimate public interest: education. Moreover, most academics, especially those who adjunct, cannot pay agency scanning and printing fees for the materials they request under FOIA, nor pursue legal assistance for release of records. By and large, academics do not pursue research at the behest of their departments, or have a departmental mandate as to the subjects they study. Faculty research is dependent on academic freedom, and access to research materials is critical to our investigations.

Thank you for convening the Roundtables and soliciting comments from FOIA requestors.

Susan

Susan Maret, Ph.D.