

STATEMENT

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United States Senate**

National Archives and Records Administration

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Good morning, Mr. Chairman, Senator Sessions, and members of the committee, I am Miriam Nisbet, Director of the Office of Government Information Services at the National Archives and Records Administration.

I am pleased to appear before you today. This Committee was instrumental in establishing the Office of Government Information Services through the Open Government Act of 2007 (P.L. 110-175), which amended the Freedom of Information Act (FOIA). Thank you in particular, Mr. Chairman and Senator Cornyn, for your vision and your perseverance in making this new office one of the levers for reinvigorating our country's FOIA.

The concept of the public's right to access to the records of its government is fundamental to our democracy. Yet, making our Freedom of Information Act work smoothly and efficiently to accommodate that concept has proved more difficult and costly than any of us could have imagined. This Committee has continued to make improvements in the law over the past 35 years – delicately balancing the various legal concerns for protection of certain information and the need for disclosure, as well as addressing practical aspects such as fees and the time limits for responses to requests for records, and most recently, by establishing the Office of Government Information Services or OGIS.

With funding received for the first time this fiscal year, the National Archives and Records Administration (NARA) acted quickly early in the year to get the office started. Funding is also contained in the FY 2010 President's Budget. I arrived at the Archives a few weeks ago and am interviewing vigorously to hire five other staff members. We will soon be a dedicated team building a straightforward and simple interface between the public and the Executive Branch agencies, offering alternative dispute resolution through mediation and helping to make FOIA work better for all involved in the process.

How will we accomplish this?

Our mission is two-fold. One part involves review of agency compliance and performance with the FOIA. We will, of course, work closely with the Department of

Justice, which has a major and well-established role in this regard, and with the Chief FOIA Officers at the agencies. One immediate and feasible task is to take advantage of available technology to view and assess the existing agency Annual FOIA Reports, similar to what is being done to assess federal agencies' information technology initiatives through the IT Dashboard and data.gov.

A second part of the mission is to offer mediation services to resolve disputes between persons making FOIA requests and agencies, as a non-exclusive and non-binding alternative to litigation. We will pursue several routes:

- We will use existing federal mediation resources to help us provide this service, something that has not been done before under FOIA except on an ad hoc basis in litigation as ordered by the court
- We will work with existing agency FOIA Public Liaisons in OGIS's review and mediation capacities.
- We will create an online dispute resolution (ODR) system, which is a relatively new approach to conflict resolution and holds great potential to efficiently process and prioritize a high volume of cases.

Many people, and this Committee, have been referring to the new office as the "FOIA Ombudsman." We view our role as mediator (assuming that a FOIA requester has not already decided to go to court) and as a source of information, which we will provide in-person as well as through many resources on the Web. Of course, many agencies as well as non-government organizations offer useful guides, templates and "good practices" on FOIA and we will promote and take advantage of these existing resources.

Public understanding of how government records are organized and maintained is not strong, nor should it be required to submit a FOIA request. But that lack of understanding can result in requests that are overly broad, or which lack the specificity to allow the agency to readily search for the records. Similarly, the volume of requests (the government receives over 600,000 FOIA requests per year), the sensitivity of the records, and the need to consult with other affected agencies all significantly impact the ability of agency FOIA officers to respond in a timely manner. The combination of these pressures can result in misunderstandings. Clearing up those misunderstandings and seeking solutions in more complicated cases, short of litigation, would save time and money for agencies and public alike, as well as bolster confidence in the openness of government.

In just a short time, I have received helpful advice and support from this Committee, the White House Open Government Initiative and the Chief Technology Officer, the Department of Justice, the National Mediation Board, innovators in the private sector, state Ombudsman offices, and members of the FOIA requester community. With all of these stakeholders assisting in the new office's outreach, we will be able to realize the vision of this Committee to achieve the timely and fair resolution of America's FOIA requests.

Thank you for the opportunity to testify. I would be happy to answer any questions.