



ADMINISTRATION AND
MANAGEMENT

OFFICE OF THE SECRETARY OF DEFENSE
1950 DEFENSE PENTAGON
WASHINGTON, DC 20301-1950

JUL 20 2010

MEMORANDUM FOR DEPARTMENT OF DEFENSE (DoD) FREEDOM OF
INFORMATION ACT (FOIA) PUBLIC LIASONS

SUBJECT: The Office of Government Information Services (OGIS)

The OPEN Government Act of 2007 amended the FOIA by establishing the OGIS within the National Archives and Records Administration and assigned responsibility to FOIA Public Liasons to assist in the resolution of FOIA disputes. Public Law 110-175 states that the OGIS shall:

- review policies and procedures of agency FOIA programs;
- review agency compliance with the FOIA;
- recommend FOIA policy changes to Congress and the President;
- offer mediation services to resolve disputes between FOIA requesters and agencies as an alternative to litigation; and
- issue advisory opinion, at the discretion of the OGIS, if mediation has not resolved a dispute.

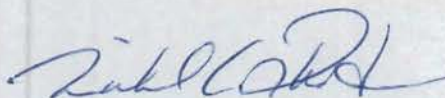
When a FOIA requester contacts OGIS to resolve a dispute, the OGIS will directly contact either the DoD FOIA Public Liasons or an alternative point of contact. If an alternative point of contact is identified, the applicable component shall provide the alternate's contact information to both OGIS and the Defense Freedom of Information Policy Office (DFOIPO) to ensure that future contacts are made appropriately.

After initial contact by OGIS, the DoD FOIA Public Liaison will attempt to resolve the dispute with the requester without further OGIS assistance. The applicable DoD FOIA Public Liaison will advise DFOIPO and OGIS of the outcome. If OGIS decides to pursue resolution of disputes which are not resolved by the DoD FOIA Public Liaison, OGIS will make appropriate inquiries of both the requester and the Public Liaison as to whether the disputed issue is a candidate for mediation. If OGIS determines that both of the interested parties (DoD and the requester) would agree to mediation, OGIS will contact DFOIPO. DFOIPO will then work with the DoD Alternative Dispute Resolution (ADR) Liaison to identify a shared neutral venue for the mediation process. The decision to accept or reject the offer of mediation services will be made by the applicable DoD Component in accordance with the Component's ADR policy and issuances after consulting with DFOIPO.



When the mediation is completed, OGIS may issue an advisory opinion pursuant to Public Law 110-175. When applicable, DFOIPO will consult with the DoD Office of General Counsel and notify the concerned DoD FOIA Public Liaison of the Department's views regarding the OGIS' advisory opinion.

I have also requested that all contacts concerning OGIS' responsibilities to review policies and procedures of agency FOIA programs and agency compliance with the FOIA be directed to me. A copy of my letter to OGIS explaining this guidance is attached. My point of contact for this is Ms. Stephanie Carr, DFOIPO, (703) 588-6807.



Michael L. Rhodes
Director

Attachment:
As stated



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Ms. Miriam Nisbet
Director, Office of Government Information Services (OGIS)
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001

Dear Ms. Nisbet:

Given the important role of OGIS, I am writing to share information concerning the Department of Defense (DoD) Component Freedom of Information Act (FOIA) program. To ensure a consistent working relationship, I issued specific guidance to DoD Components concerning interaction with OGIS in the enclosed memorandum.

The FOIA, as amended by the OPEN Government Act of 2007, tasks agency FOIA Public Liaisons with the responsibility to assist in the resolution of disputes. It is important to the Department that these liaisons are provided with the first opportunity to resolve disputes, as they are equipped to address issues regarding the FOIA programs within their purview. Therefore, I ask that whenever a FOIA requester contacts OGIS with a dispute, OGIS refer the requester to the DoD FOIA Public Liaison involved, contact the applicable FOIA Public Liaison, or contact the designated representative in order to give the DoD the opportunity to directly negotiate a resolution. This approach allows the FOIA Public Liaisons to perform their Congressionally-mandated duties.

The FOIA Public Liaisons will notify OGIS and the Defense Freedom of Information Policy Office (DFOIPO) of the disposition of any issues referred to the DoD. If a FOIA Public Liaison is unable to resolve a dispute and OGIS determines that further attempts for resolution should be pursued, we ask that OGIS make the appropriate inquiries of both the requester and the FOIA Public Liaison regarding whether the dispute is a candidate for mediation. If OGIS determines both the DoD and the requester would agree to mediation, please contact DFOIPO. DFOIPO will work with the DoD Alternative Dispute Resolution (ADR) Liaison to identify a shared neutral venue for mediation purposes. The decision to accept or reject the OGIS offer of mediation services will be made by the applicable DoD Component in accordance with that Component's established ADR guidance and regulations. This procedure will implement the portion of the OPEN Government Act of 2007 which authorizes OGIS to offer mediation services to resolve disputes between requesters and agencies of the

government. Additionally, please address any advisory opinions that OGIS may issue as a result of mediation to my office.

I look forward to working with OGIS concerning its other responsibilities including the review of agency FOIA policies and procedures, the review of agency compliance with the FOIA, and the recommendation of FOIA policy changes to Congress and the President. Please direct all inquiries and concerns pertaining to the DoD FOIA Program directly to me in my capacity as the DoD Chief FOIA Officer. This will enable me to address DoD policies and procedures, institute corrective action when necessary, or provide the Department's official views regarding proposed recommendations to Congress or the President. I assure you that OGIS will receive the full and complete cooperation of the DoD.

These procedures will facilitate the attainment of our shared objectives, including the resolution of FOIA disputes before litigation and the development of more efficient FOIA processes. Please feel free to contact me directly if you have any concerns with regard to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael L. Rhodes". The signature is fluid and cursive, with the first name being the most prominent.

Michael L. Rhodes
Director

Enclosure:
As stated