

asap

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FROM THE **PRESIDENT**

Who is ASAP?

As we celebrate our 30th Anniversary, I'd like to reiterate who we are as an organization: "The American Society of Access Professionals (ASAP) is a nongovernmental, independent, educational, not-for-profit association. It was founded by concerned federal government employees and private citizens working in the fields of information access." We were founded as a professional forum dedicated to bringing government FOIA and Privacy Act (FOIA/PA) personnel in touch with the requester community.

We are not a government agency. We are comprised of FOIA/PA and access professionals, including federal, state, local and foreign government officials; faculty and staff of colleges and universities; attorneys and paralegals; journalists; not-for-profit public interest organization personnel; government contractors and commercial businesses; librarians and privacy advocates. We're quite diverse as we share the society's beliefs and causes across the board. This diversity allows us the unique opportunity to communicate and better understand the problems and issues we encounter on a daily basis.

2009 ASAP Training Workshop

As we move into the winter season, I just wanted to report on our fall training workshop in Chicago. Our accommodations at the Sofitel along the 'Magnificent Mile' were breathtaking; what a great venue! The downtown location afforded participants an opportunity to get out and walk Lake Shore Drive, visit the Willis Tower (formerly Sears Tower) and do some shopping. Of course, lots of preliminary work and tons of behind the scene logistics contributed

to the success of the workshop. So I want to recognize Claire Shanley (ASAP's Executive Director) for all her hard work; and her supporting staff who also did outstanding work.

From registration to information, the entire staff did a wonderful job welcoming our group to the "Windy City." My thanks to all our subject-matter speakers, who are always the best! Fred Sadler, Will Kammer, Caroline Smith, Anne Weismann, Sharon Mar, Sam Jenkins and Ramona Oliver provided great presentations. A special note of thanks goes out to Jason R. Baron (NARA's Director of Litigation) for enlightening us on the subjects of social networking and electronic recordkeeping. These topics will hit us all in the coming years, if it hasn't already done so.

Privasoft and AINS were again gracious sponsors at this event; not only does the workshop afford them the ability to show their wares, but it's also a place to meet with the FOIA/Privacy workforce. These companies benefited from feedback on the current needs of processors, and the learning curve of the participants who use their products is enhanced. We appreciate their support and sponsorship at each of our venues.

At this workshop, our new attendance leaped over our 150 limit to about 180; the best part of these numbers was that 80% of the participants were first-time attendees. However, during this conference, I was a little disappointed that a couple of our attendees, by their discourteous comments, obviously didn't understand that ASAP is an amalgam of people who possess different perspectives on information access issues; hence "Who is ASAP?" Hopefully, this will find its way back to those few disruptive attendees.

IN THIS ISSUE

President's Message	1
OGIS Director Nisbet Addresses ASAP Audience and Conducts Q&A Session	2
ASAP's Fall Workshop Roundup	3
ASAP's Calendar of Events	3
2010 National Training Conference in New Orleans	4
U.S. Senate Committee on the Judiciary Holds FOIA Hearing	4
ASAP on the International Community Radar Screen	6
July "Food For Thought" — Legal and Ethical Issues of Social Media	6
"Presumption of Openness" Becomes Standard for Postal Regulatory Commission	6
Obituary: Wayne R. Jewell	6

We're Looking Ahead

We've already planned the upcoming Annual Symposium and Training Conference, December 1-2, 2009, at the Washington Convention Center. Plus, we've just recently announced the 3rd Annual National Training Conference, February 7 -10, 2010, in New Orleans. Special guest speakers will include Melanie Pustay (Director, Office of Information Policy) and Miriam Nisbet (Director, Office of Government Information Services).

Reviewing My Past Year

In closing this President's page and my year as ASAP's President, I thank you for the unique opportunity of leading this society. Also, I extend my gratitude to my fellow Board members for their support this past year. We've begun to strengthen and renew our communications with our membership through newsletters, a webpage and other social networking initiatives. While working with this year's Board members and our Executive Director, I've been truly amazed by their efforts and dedication; this has certainly renewed my appreciation for all the volunteerism they invest in our society.

Stephen L. McConnell
President



American Society of Access Professionals
NEWSLETTER

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OGIS Director Nisbet Addresses ASAP Audience and Conducts Q&A Session

On October 29, 2009, Miriam Nisbet, Director of the new Office of Government Information Services (OGIS) addressed the ASAP membership and colleagues at a special "Food for Thought" luncheon. The luncheon was held at the Walter E. Washington Convention Center and drew over 80 registrants, close to twice as many as usual for an ASAP luncheon.

Ms. Nisbet began her presentation by stating that OGIS opened in early September 2009, with its main office at the National Archives and Records Administration in College Park, Maryland. She is working with the Department of Justice and other agencies as well as with private sector stakeholders to help define the scope of the OGIS program implementation. Nisbet is in the process of hiring a staff of five in addition to herself and has already hired two persons, Barbara Gordon, Staff Assistant, and Candace Boston, Management & Program Analyst. Gordon and Boston were also in attendance.

Ms. Nisbet went on to explain that the OGIS mission concentrates on three areas: review and policy, mediation and FOIA Ombudsman. Specifically, OGIS reviews policies and procedures of administrative agencies under the FOIA, reviews compliance with the FOIA by agencies and recommends policy changes to Congress and the President to improve the administration of the FOIA. OGIS also offers mediation services to

resolve disputes between persons making FOIA requests and agencies as a non-exclusive alternative to litigation and, additionally, may issue advisory opinions if mediation has not resolved the dispute.

Ms. Nisbet stressed that the success of OGIS is dependent on all stakeholders and encouraged them to contact her with their ideas and suggestions. She also expressed plans to leverage existing technologies and hopes to have an on-line dispute resolution system. She then turned the program over for audience questions, and for the next forty-five minutes, the audience asked a wide range of questions.

OGIS Contact Information:

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OGIS – Room 2510
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College Park, MD 20740
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Miriam Nisbet, Director - miriam.nisbet@nara.gov
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The amended portions of the FOIA, 5 U.S.C. Section 552, concerning OGIS as well as some other aspects of agency compliance and service follow:

(h)(1) There is established the Office of Government Information Services within the National Archives and Records Administration.

(2) The Office of Government Information Services shall—

- (A) review policies and procedures of administrative agencies under this section;
- (B) review compliance with this section by administrative agencies; and
- (C) recommend policy changes to Congress and the President to improve the administration of this section.



Miriam Nisbet (center back row) spoke on the OGIS goals and practicalities. The OGIS staff includes Barbara Gordon, Staff Assistant (right, back row) and Candace Boston, Management and Program Analyst; (front). Rebecca Daugherty, ASAP Immediate Past President and Luncheon Co-Chair is left, back row.

(3) The Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under this section and administrative agencies as a non-exclusive alternative to litigation and, at the discretion of the Office, may issue advisory opinions if mediation has not resolved the dispute.

continued on pg.3

Amended portions of the FOIA concerning agency compliance and service:

continued from pg. 2

(i) The Government Accountability Office shall conduct audits of administrative agencies on the implementation of this section and issue reports detailing the results of such audits.

(j) Each agency shall designate a Chief FOIA Officer who shall be a senior official of such agency (at the Assistant Secretary or equivalent level).

(k) The Chief FOIA Officer of each agency shall, subject to the authority of the head of the agency—

(1) have agency-wide responsibility for efficient and appropriate compliance with this section;

(2) monitor implementation of this section throughout the agency and keep the head of the agency, the chief legal officer of the agency, and the Attorney General appropriately informed of the agency's performance in implementing this section;

(3) recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve its implementation of this section;

(4) review and report to the Attorney General, through the head of the agency, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing this section;

(5) facilitate public understanding of the purposes of the statutory exemptions of this section by including concise descriptions of the exemptions in both the agency's handbook issued under subsection (g), and the agency's annual report on this section, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply; and

(6) designate one or more FOIA Public Liaisons.

(l) FOIA Public Liaisons shall report to the agency Chief FOIA Officer and shall serve as supervisory officials to whom a requester under this section can raise concerns about the service the requester has received from the FOIA Requester Center, following an initial response from the FOIA Requester Center Staff. FOIA Public Liaisons shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

2009-2010 CALENDAR OF EVENTS

December 1-2

ASAP Annual Symposium &
Training Series
Convention Center,
Washington, D.C.

December 2

ASAP Annual Membership Meeting
12:30pm
Convention Center,
Washington, D.C.

February 7-10

ASAP Annual National Training
Conference
Hilton Riverside,
New Orleans, LA

*ASAP Board of Directors Meetings
are usually held the third Thursday
of the month at the ASAP Offices

ASAP's Fall FOIA/PA Workshop Roundup

by Caroline Smith

ASAP's FOIA and Privacy Act Training Workshop was held from September 21-23, 2009, at the Sofitel Water Tower Hotel located in downtown Chicago. Conference participants enjoyed the boutique-style hotel, which is a 32-floor architectural marvel that has commanding views of the downtown skyline and Lake Michigan. Many attendees took advantage of the hotel's close proximity to the Magnificent Mile and the numerous shops, restaurants and cultural attractions that the city has to offer.

This workshop ranks among one of ASAP's best attended. Attendance was expected to top out at 100 but, due to high demand, was expanded to include an additional 87 people. Participants included government employees from over 20 different agencies, as well as several private citizens from the requester community.

The first day consisted of several overview sessions covering the basics of the Freedom of Information Act, the Privacy Act and the interface between those two statutes. General administrative concerns and fee and fee waiver issues were introduced at two plenary sessions held the following day. After those larger meetings, participants could choose

from various smaller workshops which provided a more in-depth treatment of the subject matter, including sessions on classified information, Privacy Act requests and litigation issues. The workshop panels were designed with a view toward providing the audience with the dual perspectives of both the government and the requester community. The second day concluded with a special session for conference attendees from the Department of Defense.

Jason R. Baron, Director of Litigation for the National Archives and Records Administration, started off the third day of presentations by providing a robust overview of the current situation and future challenges related to records management. The remainder of the half-day program consisted of workshops that showcased the hands-on application of FOIA exemptions and provided attendees with an opportunity to have their final questions answered.

The feedback from participants regarding the location and the content of the workshop was overwhelmingly positive. ASAP looks forward to using participants' responses to enhance its offerings at future training sessions.

2010 National Training Conference in New Orleans

ASAP's 3rd Annual Training Conference is scheduled for February 7-10, 2010, in New Orleans, Louisiana. The Conference Planning Committee, chaired by Karen Finnegan, met and sketched out a tentative program. The Training Conference will feature new sessions on Federal Information Security Management (FISMA) and Privacy Reporting Requirements; Using Technology to Streamline FOIA; Privacy Concerns and Web 2.0; Customer Service Centers; Affirmative Postings; FTC Regulations and Consumer Privacy Protections; Basic Litigation and more. There will be sessions covering the basics of the FOI and Privacy Acts, along with breakouts on the various FOIA exemptions. We will also have a special Air Force Session.

The economy is still down for the conference industry, which means that ASAP has been able to take advantage of hotel incentives. We are extremely pleased that the Hilton Riverside Hotel is offering rates of \$130 per night. (Federal

per diem rate is \$133.) Rates are exclusive of the state and local taxes, fees and assessments, currently 14% per day, plus \$3 per room per day. These rates are offered 3 days pre and post conference, based on availability. The Hilton Riverside is in a prime downtown location on the banks of the Mississippi and offers the finest accommodations. In addition to the superb location, the hotel is located over the Riverwalk Marketplace shopping mall, where you can find well-known national apparel stores, specialty stores and unique local stores like Mardi Gras Madness and Destination New Orleans. And of course, the all important food court is also in Riverwalk.

The hotel features a first-class fitness center and two pools. Most of us are accustomed to hotel "fitness centers" which are essentially a sleeping room converted into a "gym" with a few pieces of exercise equipment.

You will be most impressed by the Riverside Hilton fitness center. It is huge – over 100,000 square feet – with every kind of exercise and weight equipment; full size tennis, volleyball, squash and racquetball courts; virtual golf; classes; trainers; etc. The cost to guests is \$12 per day, but ASAP has a special negotiated rate of \$6 per day. The hotel is wonderfully located and is within walking distance of the French Quarter.

Take some time and extensively research the hotel and surrounding areas at http://www1.hilton.com/en_US/hi/hotel/MSYNHHH-Hilton-New-Orleans-Riverside-Louisiana/index.do. You will also be able to access things to do, maps, the City Travel Guide, etc. to help plan your trip for February. New Orleans is rich in cultural history – make the most of your trip. We suggest that you book your flights soon!



U.S. Senate Committee on the Judiciary Holds FOIA Hearing

The U.S. Senate Committee on the Judiciary held a hearing entitled "Advancing Freedom of Information in the New Era of Responsibility" on September 30, 2009. Testifying before the committee chaired by Senator Patrick Leahy (D-Vt.) were The Honorable Thomas Perrelli, Associate Attorney General, U.S. Department of Justice; Miriam Nisbet, Director, Office of Government Information Services, National Archives and Records Administration; Tom Curley, President and CEO, The Associated Press (representing the Sunshine in Government Initiative); and Meredith Fuchs, General Counsel, The National Security Archive.

In his opening remarks, Sen. Leahy said that the enactment of the Freedom of Information Act (FOIA) was a "watershed moment in our Nation's history." In referencing President Obama's Presidential memorandum on FOIA, Sen. Leahy said that at the start of the White House transition, he urged President Obama to make a clear commitment to FOIA. The Senator went on to say that "FOIA has become an indispensable tool in

protecting the people's right to know . . . which is a cornerstone of our democracy." He also said that progress is being made in advancing the FOIA citing the Justice Department's comprehensive review of pending FOIA cases and the establishment of the Office of Government Information Services at the National Archives and Records Administration (NARA) as examples.

Senator Leahy pointed out that FOIA implementation is "hampered by the increasing use of legislative exemptions that are often sneaked into legislation without debate or public scrutiny" and that he worked "with Senator Feinstein, chair of the Select Committee on Intelligence, to remove an unnecessary FOIA exemption from the Intelligence Reauthorization bill." He went on to say that he and Senator Cornyn have "reintroduced the OPEN FOIA Act – a bill that requires Congress to explicitly and clearly state its intention to provide for a statutory exemption to FOIA when it includes such an exemption in new legislation."

continued on pg.5

U.S. Senate Committee on the Judiciary Holds FOIA Hearing

continued from pg.4

In his testimony, Associate Attorney General Thomas J. Perrelli said that the Department of Justice is “especially committed to encouraging compliance with the Act by all agencies and to fulfilling President Obama’s goal of making this Administration the most open and transparent in history.” In carrying out the President’s directive, Justice’s Office of Information Policy (OIP) distributed guidance to agencies advising them to apply the presumption of disclosure in all FOIA decisions, and it has started to train attorneys and access professionals in the practicalities of implementing the new policies. Most importantly, the Attorney General issued guidance that implement a new approach to disclosures and emphasize new management practices enabling government openness and accessibility.

Miriam Nisbet, the new Director of the Office of Government Information Services (OGIS) at NARA, thanked Senators Leahy and Cornyn for their “vision and perseverance in making this new office one of the levers for reinvigorating our country’s FOIA.” She reported that she is in the process of hiring a team of five other staff members. She explained that the mission of OGIS is two-fold: to review agency compliance and performance with the FOIA and to offer mediation services. She plans to utilize available technology to assess agency Annual FOIA Reports much like the assessment of the information technology initiatives through the IT Dashboard and data.gov. With regard to mediation services, OGIS will use existing federal mediation resources, work with agency FOIA Public Liaisons and create an online dispute resolution (ODR) system. The ODR system is a new approach with great potential to prioritize and process a high volume of cases.

“There’s more work to be done. The secrecy reflex at some agencies remains firmly in place, and FOIA still contains relatively weak penalties for those that don’t meet their disclosure obligations,” stated Tom Curley, President and CEO of The Associated Press, in his testimony. Mr. Curley went on to talk about the importance of OGIS. Currently, Justice’s OIP is available to help agencies and now the requester can have some help, “a crucial difference.” He urged the Committee to closely monitor OGIS and provide support, noting that the “current OGIS budget of \$1 million is much smaller than what the Congressional Budget Office said the office would need to be effective,” and that the small staff “makes OGIS smaller than some state open records offices.” On a positive note, Mr Curley said, “Miriam Nisbet’s appointment as director strikes us as a strong first step. She appears to have a clear vision of what OGIS can be, along with the passion and energy it will take to realize those ambitions.” Mr. Curley also elabo-

rated on several difficult cases where the b(3) exemption was used, prompting him to suggest a Secrecy Reduction Act that 1) requires anyone introducing a statute containing a b(3) exemption to declare it openly; 2) requires the Office of Management and Budget to review proposals from federal agencies for b(3) exemptions and limit their use and scope; and 3) requires agencies to report regularly on their use of a b(3) exemption in denying a FOIA request. Mr. Curley also put the spotlight on the FOIA’s privacy statutes and the “flawed application” of FOIA exemptions b(6) and b(7)(C).

Beginning with positive developments, Meredith Fuchs, General Counsel for the National Security Archive, also urged the Committee to strongly support OGIS and credited the Committee’s oversight with the improvement of FOIA administration at the agency level. Ms. Fuchs also highlighted several areas that need improvement. She noted that agencies continue to have backlogs and asked that the Committee review progress in eliminating backlogs and improving response times. She noted that the results of the Office of Personnel Management (OPM) Report on FOIA Personnel were met with “significant disappointment” when the information finally reached the FOIA community. She also noted the efforts of ASAP and other non-government organizations in requesting OPM Director John Berry to reconsider the report and ASAP’s Board of Directors meeting with OPM leadership. The attorneys’ fees standard was changed in the OPEN Government Act; however, courts are divided on whether the new provision applies to cases pending at the time of enactment of the OPEN Government Act. Ms. Fuchs said that the Obama Administration has had an impact and has demonstrated its commitment to open government; however, use of the discretionary release standard is mixed. Ms. Fuchs also noted that Attorney General Janet Reno took additional steps to reinforce the foreseeable harm standard and encouraged Attorney General Holder to also take additional steps beyond the issuance of his memorandum, suggesting eight detailed steps. Ms. Fuchs wrapped up her testimony by saying that threats to FOIA include labels such as controlled unclassified information (CUI) and sensitive but unclassified (SBU), the (b)(3) provisions and the lack of reports on the national security classification and declassification program review.

Over 60 people attended the hearing, many of whom are ASAP members and current and past Board members and officers, including Miriam Nisbet (ASAP President, 1995) and Meredith Fuchs (ASAP Secretary, 2007 and 2008).

ASAP on the International Community Radar Screen

Once again ASAP played host to international visitors. On Thursday, October 15, ASAP members Cindy Allard, Rebecca Daugherty, Karen Finnegan, Dick Huff, John Livornese, Kellie Robinson and Anne Weismann met with a Spanish FOIA/Privacy delegation. The delegation included María J. del Olmo, Information Resource Center Director, U.S. Embassy Madrid; Borja Bergareche, Foreign Chief Editor, Daily ABC newspaper; Joaquín Brugué Torruella, Professor of Political Science,

Autonomous University of Barcelona; María Jesús Larios Paterna, Director of Social Affairs and Relations with the Parliament (Catalan Ombudsman); Luis Menéndez Villalba, Chief Editor, Television de Galicia Channel (TVG); Juan Luis Manfredi, Professor of IE University and Emilio Guichot, Tenured Lecturer and Author.

Spain recently set up a Privacy Office and plans to implement an information access law similar to the U.S. FOIA model. The delegation spent one

day with the Department of State FOIA Office and the National Security Archive at George Washington University to discuss the issue. The ASAP members participated in these discussions. The proposed Spanish information access law would apply to the federal and local governments and to businesses such as telephone and utility companies. Once again, ASAP members provided information about the FOIA to foreign individuals whose country is developing its own FOIA.



ASAP Board members listen intently to how the Spanish laws would differ from the U.S. law.



Members of the Spanish delegation enjoy a light moment during the discussions.

July "Food For Thought" — Legal and Ethical Issues of Social Media

Hugo Teufel, Vice President of ASAP, was the guest speaker at the July 28, 2009 "Food for Thought" luncheon. Mr. Teufel discussed the legal and ethical issues of social media. The luncheon was well attended by a very interested audience of 57 ASAP members and guests. Mr. Teufel's remarks addressed the risks of social media in general as well as the risks inherent in using social media in a business environment. Particular attention was paid to the specific federal laws that government entities must follow (such as the Administrative Procedures Act, the Federal Advisory Committee Act, the Federal Records Act, the Freedom of Information Act, the Paperwork Reduction Act, the Privacy Act and OMB M-00-13 (the Federal Cookie Policy)) when considering use of social media. The discussion concluded with a suggested checklist for Federal agencies to consider prior to employing social media as well as a list of information and practices that should not be allowed on Federal platforms. The discussion was lively and the questions excellent.

"Presumption of Openness" Becomes Standard for Postal Regulatory Commission

On October 23, 2009, the Postal Regulatory Commission (PRC) issued amended regulations for FOIA requests specifying the "presumption of openness" policy articulated earlier this year by President Barack Obama and Attorney General Eric Holder. The new rules also incorporate changes in keeping with the OPEN Government Act of 2007. PRC Chairman Ruth Y. Goldway said, "[t]he Commission is proud to continue its leadership in promoting transparency by being the first Federal agency to adopt new Freedom of Information Act rules that specifically respond to the President's call for a presumption of openness and disclosure for all decisions involving FOIA." The new FOIA rules support the underlying principle of transparency embedded in the Postal Accountability and Enhancement Act.

OBITUARY

Wayne R. Jewell

ASAP mourns the loss of Wayne R. Jewell who died on October 1, 2009. We have fond memories of Wayne at our ASAP training conferences where he provided software demonstrations for AINS, Inc. Wayne always had kind words, a great sense of humor and a twinkle in his eye. We send his family and friends our heartfelt sympathies.