

RECOMMENDATIONS FOR OMB'S OPEN GOVERNMENT PLAN

February 8, 2016

CONGRESSIONAL BUDGET JUSTIFICATIONS

Every year each agency releases a congressional budget justification. This contains useful information about how the agency intends to make use of its funding. Under OMB Circular A-11 22.6(c), each agency is required to make its justification available to the public (including posted on the Internet) within two weeks after transmittal to Congress.

It would be useful for all these budget justifications to be centrally housed on OMB's website along with all the other budget materials (see <http://www.whitehouse.gov/omb/budget>). It can be difficult to find agency congressional justifications on their websites. Moreover, many people are unaware of the existence of the justifications in the first place. Even GPO, apparently, is unaware of the justifications (see <http://1.usa.gov/1mrQSlS>), as it does not gather them along with its publication of other budget materials.

It would be useful for budget justifications to be published in a format in addition to PDF, such as TXT or DOC. PDF format makes it virtually impossible for computers to make use of the underlying information. For example, if you wanted to compare this year's justification against last year's by tracking the changes, you would be unable to do so when dealing with a PDF. OMB already publishes data in alternative formats to facilitate public use (specifically XML and CSV), and it makes sense to publish text in a format that can be analyzed as well.

MACHINE READABLE ORGANIZATION CHART

The structure of the government is confusing and complex. While the "United States Government Manual" provides information about the structure of government, there is no machine readable organizational chart that allows one to uniquely identify programs and offices within the government. This information, however, would be useful to those who wish to track the functions of government programmatically.

This recommendation was adopted as part of the National Action Plan in 2015.

FORM REFORM

OMB's Office of Information and Regulatory Affairs (OIRA) is charged with enforcing the Paperwork Reduction Act, including how agencies promulgate forms. Current agency practice permits and often encourages the use of paper-forms to gather and channel requests for information. This leads to rekeying of data, significant data quality issues, inadvertent disclosure of private information, and significant delays in public access to data. OMB should lead an effort to reform how the government uses forms.

Forms should be electronic and allow for the easy flow of data into databases. (This is consonant with

OMB's new data policy that directs that information should be collected electronically by default.) Information should be validated upon input and automatically checked for errors. To the maximum extent possible, unique entity identifiers should be employed, particularly those that are consistent across databases. Forced-choice mechanisms and limited data fields should be employed to restrict the kinds of information that can be input. Data should be automatically segregated as to what is and is not disclosable, so that no further review is necessary for data tagged as disclosable.

In addition, OMB should employ multiple techniques to improve the quality of information submitted. Extensive user testing (including A/B testing) should be performed and monitored on an ongoing basis to ensure forms are as easy to understand and complete as possible. Behavioral economics should be employed to maximize the effect of data collection, including through the development of model forms. Furthermore, to the extent possible, data should be pre-populated to reduce the amount of time required to enter information.

OIRA LOBBYING TRANSPARENCY

OIRA plays a central role in reviewing regulations. Executive Order 12866 and Disclosure Memo-B (2001) instantiate requirements to show how OIRA has affected a rulemaking and how OIRA has been lobbied by those seeking to alter the course of its deliberations. Multiple GAO and CRS reports, however, indicate that OIRA has not fully complied with its transparency requirements.

We believe that OMB should address the following concerns raised in the most recent GAO report by:

- Defining the transparency requirements applicable to the agencies and OIRA in Executive Order 12866 in such a way that they include not only the formal review period, but also the informal review period when OIRA says it can have its most important impact on agencies' rules.
- Reexamine OIRA's current policy that only documents exchanged by OIRA branch chiefs and above need to be disclosed because most of the documents that are exchanged while rules are under review at OIRA are exchanged between agency staff and OIRA desk officers.
- Establish procedures whereby either OIRA or the agencies disclose the reason why rules are withdrawn from OIRA review.
- Define the types of "substantive" changes during the OIRA review process that agencies should disclose as including not only changes made to the regulatory text but also other, non-editorial changes that could ultimately affect the rules' application (for example, explanations supporting the choice of one alternative over another and solicitations of comments on the estimated benefits and costs of regulatory options).
- Instruct agencies to put information about changes made in a rule after submission for OIRA's review and those made at OIRA's suggestion or recommendation in the agencies' public rulemaking dockets, and to do so within a reasonable period after the rules have been published.
- Encourage agencies to use "best practice" methods of documentation that clearly describe those changes.

We welcome OIRA's recent effort to electronically publish information about lobbying activities. We hope OIRA will move to make this information available in bulk, or at a minimum, through an API.

We also agree with some recommendations made in a Center for Progressive Reform report, issued after reviewing all OIRA meetings between October 2001 and June 2011. In particular:

- That a rule proposed by an agency, both prior and after OIRA review, should be publicly posted and in such a format as to permit a determination of what has changed.
- If OIRA asks for a 30-day extension, its request and the agency head's approval should be in writing and made public as soon as they are released.
- When OIRA examines non-economically significant rules, it should explain in writing how the proposal fits under the exceptions set forth in EO 12,866 and post that information online.

BEST PRACTICES FOR PROACTIVE DISCLOSURE

Agencies should set up a process to proactively disclose information that is of interest to the public on an ongoing basis. To help prioritize, agencies should look at requests made through the Freedom of Information Act, via other request-based systems (i.e., specialized forms for a particular dataset or document), and information regularly disclosed by public affairs and congressional relations offices.

Categories of information to consider for proactive release include: commercial (business-related), current events (relevant to journalists), ethics (relevant to government watchdogs, such as lobbying, ethics waivers, etc.), agency operations, and datasets (paper versions are disclosed to the public but the underlying dataset must be FOIA'd).

On a regular basis, each agency should review its efforts to evaluate the effect of proactive disclosure and whether additional documents/datasets should be proactively disclosed. The following are a few ideas on getting started.

1.—Review how the agency already discloses information to the public.

Agency information is made available to the public in many ways. Some examples include:

- As responses to FOIA requests
- As responses to specialized request forms
- Responses to media inquiries (by email, telephonically, and press advisories and releases)
- As letters or reports to Congress or OMB
- Information the agency is trying to place with media
- Information disclosed in reports (already online) that are not in machine-readable formats

There may be others ways as well. Explore how the public accesses information.

2.—Get an understanding of how each of these information request processes work and obtain a representative sample of the kinds of requests being answered.

FOIA. Obtain the FOIA logs and randomly choose a significant number of requests (say 500 or 1000).

Categorize each request based on the likely purpose for which it will be used: commercial, current events, ethics, agency operations, and datasets. Within each category, figure out whether the requests overlap a common dataset or series of documents.

Responses to specialized request forms. Create a list of the specialized information request forms that an agency uses to receive requests from the public. Determine the volume of requests received, on average, each year. For each form, figure out whether the information is pulled from a particular dataset or set of documents.

Responses to media inquiries. Reach out to press office staff to see whether they keep a media log, which tracks who has called and what they've called about. If it exists, review a representative sample (pick a few random days) to see whether there is any commonality to the requests. Identify and list the most frequent requests. If not, look at releases and advisories pushed out by fax or email.

Reports to Congress or OMB. Make a list of all reports to Congress or OMB. Are they already available online, but not in one central place? Are multiple years grouped together? Are they available through FOIA or published through some other means?

Information to be placed with the media. Speak with press offices to get a sense of the kind of information commonly pushed to the public. Is it available online in one central place? How is the information presented?

Information disclosed but not in machine-friendly formats. Create a list of reports available on the website. Identify whether they are only available as PDF, or are they available in other formats as well, such as csv or doc?

3.—Prioritize

Looking at the information identified above, are there kinds of information that is requested again and again? If so, is it possible to disclose the underlying dataset or series of documents that underpin these common requests? Decide based upon the number of requests and the likelihood of use by the public.

Some clues to look for:

FOIA. Is information drawn from a certain source requested again and again? If so, is it possible to make the source information available to the public? If not, is it possible to create an expedited way of requesting that information? Or to pre-process that information as if it were already the subject of a FOIA request?

Responses to specialized forms. While being sure to include items from each category of information to consider for proactive disclosure, look at the most utilized special forms and determine whether it is possible to release the underlying information all at once.

Responses to media inquiries. Are there kinds of information requested again and again from press staff? Or types of requests that can be anticipated in the news cycle? If so, work with press staff to get

ahead of the curve and disclose the information that is frequently requested.

Reports to Congress or OMB. If these reports routinely become available, publish them all online in a central place on the agency website as soon as they are issued. If there are concerns about redactions under FOIA, process through FOIA immediately prior to receiving a request, so they can be released at the same time or as close as possible to when the report is issued.

Information trying to be placed with the media. Publish the information as soon as possible.

Information disclosed but not in machine-readable formats. Work with offices and technology staff to make sure information published as a PDF is also published in other (open) formats as well, such as csv and doc.

4.—Two more things

(i) Talk to external and internal stakeholders. They know where the pain points are and can advise as to what would be most useful.

(ii) Look to see if an entity is broadly republishing the information the agency has provided. For example, some non-profit organizations will request an entire dataset and make it available all at once. In turn, many thousands of people will use that information. Instead of making the organization request that data, publish it online so it is available at once to everyone.

Examples of categories of information:

- **Business:** Hedge funds using FOIA requests to obtain nonpublic information from federal agencies
<http://online.wsj.com/news/articles/SB10001424127887324202304579053033444112314>
- **Current events:** (anything relevant to journalists) E.g., licenses for crude exports to Europe
<http://www.prairiebizmag.com/event/article/id/17706/>
- **Ethics:** Personal Financial Disclosure Forms from the Office of Government Ethics (requestable one at a time). See <http://www.oge.gov/Open-Government/Access-Records/Current-Executive-Branch-Nominations-and-Appointments/>. See also OIRA lobbying information (available as webpages but not dataset) <http://sunlightfoundation.com/blog/2012/10/04/fix-federal-rulemaking-lobbying-transparency/>
- **Agency Operations:** Department of Justice Office of Legal Counsel Opinions. Some are disclosed on multiple webpages, but not all. <http://sunlightfoundation.com/blog/2012/08/15/39-of-office-of-legal-counsel-opinions-kept-from-the-public/>
- **Datasets:** IRS 990s (501(c)(4) tax exempt organizations).
<https://sunlightfoundation.com/blog/2013/04/26/nonprofit-e-file-data-should-be-open/>

AGENCY BEST PRACTICES

In 2013, many organizations collaborating on a list of agency best practices for open government. A full

list of those best practices, with examples of where they are being implemented by agencies, is available at this URL: <http://www.pogo.org/our-work/resources/2013/best-practices-for-open-and-accountable-government.html>.