

## President Obama's Budget Funds FOIA "Ombudsman"

### Digital Media and Data Privacy Law Blog

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In a recent post, we reported that President Obama issued a Freedom of Information Act memorandum directing executive departments and agencies to administer FOIA with a presumption in favor of openness and a memorandum calling for transparency in government. President Obama recently took an additional step that appears to provide evidence of the administration's continued commitment to open government: On February 26, 2009, President Obama submitted a budget for fiscal year 2010 that includes \$1 million for the new Office of Government Information Services that would serve as an "ombudsman" for FOIA requests.

OGIS dates back to December 31, 2007, when President Bush signed the OPEN Government Act that created this new office. The OPEN Government Act expressly provides that OGIS is to be located within the National Archives and Records Administration (see Section 10). The statutory purpose of OGIS is to review the FOIA policies and procedures of government agencies, review the agencies' FOIA compliance, recommend policy changes to Congress and the President, and offer mediation services to resolve disputes between persons making FOIA requests and agencies (mediation under the act is a nonexclusive alternative to litigation). According to Sen. Patrick Leahy, who sponsored the act, Congress "placed OGIS in the apolitical National Archives to enhance this office's independence, so that all Americans can be confident that their FOIA requests would be addressed openly and fairly."

Only weeks after President Bush signed the OPEN Government Act, the Bush administration submitted a budget for fiscal year 2009 that attempted to locate OGIS to the Department of Justice and that provided no funding for the office. Some criticized the Bush plan as an untenable conflict of interest—how could Justice impartially police FOIA compliance when it is the agency responsible for defending lawsuits brought against the government under the act? Others accused the Bush administration of trying to circumvent the OPEN Government Act and to render the newly created OGIS powerless.

Now, under the Obama budget plan, OGIS would be housed in the National Archives and Records Administration, as required by the OPEN Government Act, and it would be funded with \$1 million. The establishment and funding of OGIS is not yet final as Congress has not yet completed the budget process, but President Obama's proposed funding for and location of the office is a step in the right direction for advocates of openness. For additional commentary and critique of President Obama's performance in the area of government openness, see this recent article from the *New*

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*York Times.*