Since Congress created the Freedom of Information Act (FOIA or “the Act”) in 1966, the FOIA process has, by design, been adversarial. One need look no farther than the U.S. Department of Justice's Guide to FOIA¹ to understand the complicated nature of the process. (While the guide is now published online, the last hard copy print in 2009 was two inches thick.) At issue in much of the case law cited in the guide is the careful balancing of the public's right to know with an agency’s need to keep some information private in order to carry out its mission and protect other interests.

In 2007, Congress had a bold idea. To help avoid costly court cases and improve the FOIA process, it introduced alternative dispute resolution into FOIA. By adding 104 words to the statute, the Office of Government Information Services (OGIS) was created. Since OGIS opened in 2009, it has become a valuable resource for both requesters and federal agencies to seek assistance with the FOIA process. In the words of Congress, OGIS is the FOIA Ombudsman.²

In addition to directing OGIS to provide mediation services to resolve and prevent disputes between FOIA requesters and federal agencies, the law requires OGIS to review agency FOIA policies, procedures and compliance, and identify procedures and methods for improving compliance. In fulfilling both mediation and compliance missions, OGIS staff of 10 advocates work not for the requester or the agency but on behalf of the FOIA process itself.

Those who work closely with FOIA note that Congress tends to amend the Act every decade or so, and 2016 was no exception. On June 30th, President Obama signed the FOIA Improvement Act of 2016 into law.³ These amendments expand OGIS's role significantly, particularly with respect to its mediation services function.

**Resolving and Preventing Disputes**

In its first seven years, OGIS refined the FOIA dispute resolution process with the goal of preventing litigation by improving communication and increasing understanding between FOIA requesters and federal agencies. While the range of services offered includes traditional mediation, most FOIA disputes can be resolved through informal
facilitated communications. That said, OGIS cases vary widely; sometimes staff assists people through a 15-minute phone call, while in other cases, staff spends months working with disputing parties to reach a mutually agreeable resolution. Since it was created, OGIS has responded to more than 6,000 requests for assistance.

The 2007 amendments that created OGIS were silent on how agencies should inform requesters of the availability of OGIS’s services, which were to be offered as a non-exclusive alternative to litigation. In an effort to allow the FOIA process to work as it should with minimal interference, OGIS and the Department of Justice Office of Information Policy (OIP) encouraged agencies to inform FOIA requesters about the availability of OGIS’s services in correspondence responding to FOIA appeals (in other words, at the conclusion of the administrative process at which point requesters have the option to file a lawsuit in U.S. District Court). The 2016 amendments, however, require that agencies inform requesters of OGIS availability to help resolve disputes at several points during the FOIA process which significantly increases OGIS’s role. For instance, FOIA now requires that when “unusual circumstances” prevent an agency from processing a request within FOIA’s statutory 20-working-day time limit, the agency must notify the requester of the availability of OGIS and the agency’s FOIA Public Liaison (FPL) to assist. The law also requires that agencies inform requesters of the availability of OGIS and FPLs to help resolve disputes when the agency initially responds to the request with an adverse determination — a response that is anything other than a full release of records.

Since the 2016 amendments took effect, OGIS has received dozens of requests for assistance at the initial response stage or earlier. OGIS carefully coordinates work on these cases with agencies’ FOIA and appeals staffs to reduce confusion and avoid duplication of effort. It also provided agencies with language they can use in initial response letters to both notify requesters of their options (the appeal process, assistance from FPLs, and assistance from OGIS) in a way that preserves their administrative rights and reduces confusion and duplication by suggesting next steps.4

Assessing FOIA Compliance

Congress also required OGIS to review agency FOIA policies, procedures and compliance. While there is a natural tension between OGIS mediation and compliance functions, these complementary processes benefit one another, as well. Congress reasoned that by virtue of the cases brought to OGIS for mediation, the office would be in a good position to recognize emerging specific and systemic issues regarding FOIA compliance.

As with the mediation services, OGIS conducts assessments of agency FOIA programs as an advocate for the FOIA process with a focus on impartiality. Armed with the elements of an effective FOIA program, OGIS created an assessment methodology that includes an online survey for FOIA professionals. OGIS assesses the survey results along with the agency’s FOIA regulation, website, training materials and other written materials. OGIS also reviews the agency’s FOIA litigation, data from the Annual FOIA and Chief FOIA Officer reports and information from civil society groups to discern trends. Finally, OGIS staff interviews agency FOIA professionals and reviews a sample of FOIA request files. OGIS’ final report is not designed to be a “gotcha” document or to provide a grade, but rather to provide a thoughtful analysis of agency FOIA compliance along with recommendations for improvement.

Other OGIS Activities

The 2016 amendments instruct OGIS to communicate with stakeholders in two important ways. First, they appoint OGIS’s Director to serve as co-chair (along with the OIP Director) of a newly formed Chief FOIA Officers Council. This group of senior agency
officials meets quarterly and provides a valuable opportunity for agency FOIA leadership to share ideas and hear from the public, and for OGIS and OIP to speak directly to agencies.

Congress also added a provision to FOIA that requires OGIS to host an annual open meeting with stakeholders, so that OGIS may both provide updates on activities and receive comments from the public. The first such meeting is planned for March 2017 to coincide with the annual Sunshine Week celebration of government openness.

OGIS staff are determined to ensure that the FOIA process is efficient and fair. It is a clear example of how the federal government seeks to improve its processes and uphold the law.

Carrie McGuire leads OGIS’s Mediation Team, where she works closely with FOIA requesters and federal agencies to resolve disputes. Prior to her work at OGIS, McGuire directed the Program on Networks at the American Library Association’s Office for Information Technology Policy.

Kirsten Mitchell leads OGIS’s Compliance Team, which she started after nearly five years of mediating FOIA disputes. Mitchell is a former journalist who frequently used state and federal records as well as database analysis to shine a light on how government operates. She spent two years as a journalism law fellow at the Reporters Committee for Freedom of the Press.

Endnotes
Yolanda L. Ricks
Attorney Advisor, Office of the Attorney Advisor, U.S. Department of Health & Human Services, Centers for Medicare & Medicaid Services
Baltimore, MD

What is one decision that you made that changed the course of your career?
The decision to join the U.S. Department of Health & Human Services, Centers for Medicare & Medicaid Services (CMS) as an Attorney Advisor, after nine years as a litigator/prosecutor for the Illinois Office of the Attorney General. Congress had just passed the Affordable Care Act in March of 2010, and I took a leap to federal service after working as an Illinois Assistant Attorney General and administrative law judge with the Illinois Supreme Court’s Attorney Registration and Disciplinary Commission.

What is your proudest work accomplishment?
As an attorney advisor, I am primarily engaged in writing appeals involving complex interpretation of Medicare and Medicaid reimbursement regulation, interpretation of statutes, and CMS policy. My proudest work accomplishment was receiving the CMS Administrator’s 2011 Achievement Award—CMS’ highest honor for individuals and teams who demonstrate sustained superior performance and significantly move CMS toward the achievement of its goals and objectives. I received the Administrator’s Award for reducing the agency’s Freedom of Information Act appeals backlog by 91 percent, without litigation, which far exceeded the Presidential mandate of 10 percent required in the Open Government Act of 2009. Previously, only career veterans were eligible for this award.

What do you now know that you wished you knew when you first began practicing law?
The field of law can change very rapidly and there is not necessarily a roadmap. Trust your instincts, and learn to bloom where you are planted. Your job description will continue to evolve, and you must learn to adapt to new environments and cultures. Always let the quality of your work speak louder than anything else.

Nominations for GPSLD Leadership Positions
GPSLD Chair Pauline Weaver has appointed this year’s GPSLD nominating committee. The three-member committee will consist of committee chair Hon. Janet Coulter, 300 Oceangate, Suite 200, Long Beach, CA, 90802; General Kenneth Gray, 2016 White Oak Drive, Morgantown, WV 26505; and Joan M. Burke, P.O. Box 183, Trenton, NJ, 08625.

All officer positions will be up for election at the August 2017 ABA Annual Meeting in New York City. (Please note that the current chair-elect, automatically becomes chair for 2017–18, and the current chair automatically becomes immediate past chair for 2017–18 at the close of the 2017 Annual Meeting.) In addition, projected openings include seats for member-at-large and nominees of ABA affiliated organizations, ABA entities and state bar representatives. Some incumbents may be renominated.

Members who wish to be considered, must send a letter of interest and bio, no later than April 7, 2017, to Judge Janet Coulter, Chair, Nominating Committee, American Bar Association, GPSLD 1050 Connecticut Ave., NW, Suite 400, Washington, DC 20036 or to GPSLD@americanbar.org.

ABA Presidential Appointments
Every year, the ABA President-Elect makes appointments to ABA-wide standing and special committees and commissions. It is important that government and public sector lawyers be fully represented on such entities so that our special concerns will be heard. The Division recommends members for such positions. Please visit http://apps.americanbar.org/appointments/home2.html for more information.

If you are interested in a recommendation from the Division, please contact Alison Hill at 202-662-1024 or alison.hill@americanbar.org and she will provide you with the appropriate form. The deadline to return the completed form is February 6, 2017.
Honor a Public Lawyer or Public Law Office

The Division is accepting nominations for its three national awards to be presented at the ABA’s Annual Meeting in New York in August. The Dorsey Award recognizes exceptional work by a public defender or legal aid lawyer; the Hodson Award is presented to a government or public sector law office (not an individual) that has demonstrated sustained, outstanding performance or has performed a specific and extraordinary service; and the Nelson Award recognizes outstanding contributions to the ABA by a public lawyer. One of the main purposes of the Division’s awards program is to highlight the often-overlooked achievements of our nation’s public lawyers.

Take advantage of this opportunity to recognize the outstanding efforts of a public law office or individual public lawyers and help publicize some of the extraordinary work accomplished in the public sector.

See www.americanbar.org/groups/government_public/awards.html for nomination requirements. Nominations must be received by the Division no later than Monday, April 10, 2017. Contact Alison Hill at 202-662-1024 or alison.hill@americanbar.org with any questions.

GPSLD PROGRAMS
FRIDAY, FEBRUARY 3, 2017

11:00–12:00 p.m.
What Does Competence Mean in the Digital Era? (Ethics credits requested)
Attorneys worry about what technological competence means. Today’s technology provides great benefits, including productivity, efficient workflow, mobility, rapid communications, and unprecedented access to information. With these benefits, however, come great risks, particularly in the area of confidentiality. What do the amendments to ABA Model Rules 1.1 and 1.6 mean to your practice? From understanding business and legal software to meeting your ethical duty of communication and making sure you are competent (and ethical), this program will help to answer your questions using uncomplicated, understandable terms.

$40 registration fee

1:00–3:00 p.m.
Negotiation Skills Seminar
No matter what type of law you practice, the ability to negotiate well is a vital skill. Whether settling a claim, obtaining favorable terms on a service contract, or reaching a plea deal, you are engaged in the act of negotiation. Using a real-life hypothetical, this course will provide an overview on the art of negotiation including preparation strategies, tried and true tactics to improve your bargaining position and the role of effective correspondence and memorialization.

$50 registration fee

3:15–5:15 p.m.
Ethical Considerations in Public Sector Law
This program examines the unique ethical issues confronted by government lawyers using an entertaining, interactive format. Dramatization of hypothetical scenarios brings to life common ethical conundrums and encourages lively discussion. Examples of topics include special conflicts of interest for former and current government officers and employees; organization as client; responsibilities of supervisory lawyers, and more.

$50 registration fee

Visit www.governmentlawyer.org to register.
TechTips

Ensure the navigability of your government office website by including these items and features:

- **Responsive design** automatically scales content to accommodate smart phones and tablets.
- **Search tool** allows users to filter results by agency, person, service, or jobs, for example.
- **Site map** helps users find what they are searching for and search engines like Google will use this to index your site.
- **Accessibility** assists seeing and/or hearing impaired users by ensuring that text size can be enlarged, that videos have a transcript, and that photos have alternative text that can be read by screen readers.
- **Breadcrumb trails** a visual navigational aid that shows readers where they are on the site. For example: Home>ABA Groups>Government and Public Sector Lawyers Division.

Want More TechTips?
Visit ABA’s Legal Technology Resource Center at [www.americanbar.org/groups/departments_offices/legal_technology_resources.html](http://www.americanbar.org/groups/departments_offices/legal_technology_resources.html)

Get involved
JOIN A COMMITTEE

GPSLD needs you! Please email your choices for committees, indicating your first and second choices.

- Awards: Oversees the nomination and selection process of the Division’s three national awards.
- Bylaws: Reviews the GPSLD’s bylaws and recommends amendments as needed.
- CLE: Oversees the Division’s CLE programs.
- Ethics: Monitors ethical issues relating to public lawyers.
- Hot Topics – NEW: Will monitor public law practice to determine if there are any issues that the division should investigate more deeply by, for instance, publishing an article, presenting a CLE program or sponsoring policy before the ABA House of Delegates.
- International Pro Bono – NEW: Will provide members with information about pro bono opportunities around the world.
- Law Student Outreach: Presents public lawyer career programs for law school students.
- Membership: Responsible for recruiting and retaining Division members.
- Newsletter: Writes and solicits articles for the Division’s quarterly newsletter, *Pass It On*.
- Pro Bono: Provides pro bono information for and about public lawyers.

Also indicate if you’d like to join the Military Lawyers Conference (it’s FREE) which provides benefits and services for military lawyers.

Email your preferences to Alison Hill at [alison.hill@americanbar.org](mailto:alison.hill@americanbar.org).
Questions? Contact Alison at 202-662-1024.

Want to Be Profiled? (Trust Us, It’s a Good Thing)

We are looking for members who would like to be profiled for our “Member Profile” feature. It only takes a few minutes to answer your pick from our stable of questions and is an easy way to give back by imparting some wisdom and advice to young lawyers and law students. If you are interested, contact Katherine Mikkelson at [katherine.mikkelson@americanbar.org](mailto:katherine.mikkelson@americanbar.org).

New International Pro Bono Committee!

We’ve just created the International Pro Bono Committee. This committee will provide members with information about pro bono opportunities around the world. Opportunities will require a variety of time commitments—from short term (several days) to longer (2–3 weeks or several months.) There are also opportunities to volunteer in the U.S. on international matters. To join the committee, simply email Alison Hill at [alison.hill@americanbar.org](mailto:alison.hill@americanbar.org).
ABA Blueprint is Live!

Want a simple way to build your practice? Visit ABA Blueprint.com.

ABA Blueprint takes the guesswork out of selecting legal tech and business products that will help you serve your clients better.

You can select a curated bundle of software and services or customize your own package by answering a few questions about your practice. Visit ABA Blueprint today for exclusive member-only discounts on products that will help you continue to do good, better.

Take Advantage of Membership Benefits

Are you taking advantage of all of your Division and ABA member benefits?

- CLE programs—both live and webinars—with discounted fees for Division members
- Opportunities for networking at Division meetings and receptions
- Public Law Office Management content available at www.americanbar.org/groups/government_public/resources/public_law_office_management.html
- Public Lawyer Career Center resources available at www.americanbar.org/groups/government_public/resources/public_lawyerCareer_center.html
- Free audio programs available at www.governmentlawyer.org
- ABA Journal articles on emerging legal trends
- Significant Member Advantage Program discounts
- Division periodicals designed especially for government and public sector lawyers

THE DIVISION IS SOCIAL!

Stay connected with the Division on all our social media channels.

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www.linkedin.com/in/abagpsld

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ABA Midyear Meeting
February 1–7, 2017
Miami

To register for the Midyear Meeting, go to www.americanbar.org/calendar/midyear.html. Registration is free but there are nominal charges for Division CLE offerings (visit www.govtlawyer.org to register.) All Division events take place at the Hilton Miami Downtown.

DIVISION EVENTS

Friday, February 3
11:00–12:00 p.m.
What Does Competence Mean in the Digital Era?
CLE (ethics credits requested)
$40 registration fee

1:00–3:00 p.m.
Negotiation Skills Seminar CLE
$50 registration fee

3:15–5:15 p.m.
Ethical Considerations in Public Sector Law CLE
$50 registration fee

Saturday, February 4
9:00–12:00 p.m.
Council Meeting

ABA Annual Meeting
August 10–15, 2017
New York