



American Society of Access Professionals, Inc.
12th Annual National Training Conference
July 22-24, 2019
Renaissance Capital View Hotel - Arlington, Virginia
Sessions, Instructors and Room assignments are subject to change
Some speakers appear in their personal capacities

Sunday, July 21

7:00 pm-9:00 pm ASAP Program Registration/Help Desk – 2nd Floor, Salon Ballroom Area
- An opportunity for our hotel guests to avoid the morning rush.

Monday, July 22

7:30 am-4:30 pm ASAP Program Registration/Help Desk – 2nd Floor, Salon Ballroom Area
- Check in with ASAP Registrars (Only check in one time for all days in attendance)

7:30 am-9:30 am Morning Refreshments – Salon Foyer – Visit with Sponsors

7:55 am-9:00 am **Welcome and Introductions for Bonus Class – ASAP President Kirsten Mitchell – Salon 4**

BONUS CLASS - Session 1.01 – Salon 4
State and Local Freedom of Information

State and local governments process requests for public records under statutes that are often modeled on, but not exact matches to, the federal FOIA. Our panel of experts will discuss how their laws are similar to and different from federal FOIA, and share their insights into trends that are emerging in access laws at the state and local level.

-Ginger McCall, Public Records Advocate for the State of Oregon

-Niquelle M. Allen, Esq., Director of the Office of Open Government, District of Columbia

-Michael Morisy, Founder and Executive Director, MuckRock

7:55 am – 9:00 am **Special Breakout – Department of Veterans Affairs – Salon 1-3**
– Barbara Swailes, Angela Pluff, and Stacy Ekis, Veterans Health Administration

9:20 am-9:30 am **2019 NTC Welcome & Announcements – ASAP President Kirsten Mitchell - Salon 4**

9:30 am-10:45 am **Session 1.02 – Salon 4**
Do You Have Perfect FOIA 2020 Vision? What Are The New and Emerging Government Recordkeeping and Access Issues Likely To Arise Over The Next Decade?

Just at the moment many government agencies are finally getting a handle on archiving email in “Capstone” repositories, new and emerging forms of commercially available electronic messaging platforms are becoming widely available, including ephemeral and self-destructing communications technologies. Beyond traditional text-based communications, the Internet of Things promises that the government will soon be collecting data from a kaleidoscopic number of outside sources, in a wide variety of formats. So too, recently enacted open data legislation, including the Foundations for Evidenced-Based Policymaking Act (incorporating the OPEN Government Data Act) are adding to a level of awareness concerning the availability of government records in the form of agency data assets. All of these new types of government records and many others will bring fresh challenges to FOIA officers over the next decade, beyond already existing workloads. Let’s take a lively tour of what promises to be the future of government recordkeeping and access issues over the next decade, putting on our special 3D-printed FOIA 2020 glasses!

-Jason R. Baron, Esq., Drinker Biddle

10:45 am-11:00 am Refreshment/Stretch Break – Salon Foyer – Visit with Sponsors

11:00 am-12:15 pm **CONCURRENT SESSIONS – PLEASE CHOOSE ONE**

Session 1.03 – Salon 4

Basic/Refresher Track - FOIA

FOIA Processing: Key Procedural Elements

Instructors will discuss the key procedural elements of the statute including those under the FOIA Improvement Act of 2016. This session will provide a strong foundation for growth and is perfect for newcomers, those seeking a refresher, and those needing an overview of the changes provided in the FOIA Improvement Act of 2016.

-Amy Bennett, Dept. of Homeland Security

-Mike Bell, Dept. of Transportation

Session 1.04 – Salon 1-3

Basic/Refresher Track – Privacy

The Privacy Act of 1974: Scope, Disclosure and Requirements

Allegations of governmental abuse led Congress to pass the Privacy Act in 1974 (remember Watergate?). The Act's purpose is to balance the Government's need to maintain information about individuals with protecting the rights of those individuals from unwarranted invasion of privacy. This session will cover the basic policy objectives of the Act and compliance; an overview of disclosure of records with and without consent; and agency requirements including civil remedies and criminal penalties. This session is a great basic foundation course and can also be used as the perfect refresher.

-Viki Halabuk, Dept. of Defense

Session 1.05 – Salon 5-7

Other/Specialty/Niche Track

What to Expect in FOIA Litigation

What happens once a FOIA lawsuit is filed? How do you even learn that your agency has been sued and what your duties and obligations are? The instructors will detail what needs to be done, how to do it and when to do it. You will come away with an understanding of administrative remedies, discovery, Vaughn indices, declarations, duty to segregate, waiver of exemptions in litigation, attorney fees, and much, much more.

-Anne Weismann, CREW

-Kevin Tyrrell, U.S. Secret Service

12:15 pm-1:45 pm Lunch – On Your Own (Have extra time? – Visit with Sponsors)

1:45 pm-3:00 pm **CONCURRENT SESSIONS – PLEASE CHOOSE ONE**

Session 1.06 – Salon 5-7

Basic/Refresher Track - FOIA

FOIA Exemptions: One to Nine

Classified information. Business or proprietary information. Attorney-Client privilege. Attorney work product. . . Investigatory records. Pre-decisional information. Agency regulations and procedures. Discretionary exemptions. What do the FOIA's nine exemptions cover and how are they applied? This session provides an overview understanding of each exemption and whether you can use discretion in its application. It is a perfect foundation course that is complemented by other sessions that delve into the specific exemptions.

-Marianne Manheim, NIH

-Mike Bell, Dept. of Transportation

Session 1.07 – Salon 1-3

Basic/Refresher Track – Privacy

Privacy Act Conditions of Disclosure

Now that you have a Privacy Act request, what can you release? This session will help you understand Systems of Records Notice and exemption rules as well as the 12 reasons a record may be released without an individual's authorization.

-Cindy Allard, Dept. of Defense

Session 1.08 – Salon 4

Other/Specialty/Niche Track-FOIA

Hear Ye: FOIA Updates from the Courts

This session will provide an "up to the minute" review of recent rulings in FOIA cases. Cases will be correlated to the specific FOIA requirement, and review the decisions with tips on their impact for FOIA processing.

-Harry Hammitt, Editor/Publisher, Access Reports, Inc.

-Matt Collette, Massey & Gail LLP (formerly with the Dept. of Justice)

3:00 pm-3:15 pm Refreshment/Stretch Break – Salon Foyer – Visit with Sponsors

3:15 pm-4:30 pm

CONCURRENT SESSIONS – PLEASE CHOOSE ONE

Session 1.09 – Salon 5-7

Basic/Refresher Track – FOIA

Exemption 1: Protecting National Security Information

Protecting classified national security information has been a newsmaker in recent months. Public interest continues to increase, and that translates into complex FOIA requests. In this session you will gain an understanding of how a disclosure statute—FOIA—also protects classified national security information. An overview of the Mandatory Declassification Review process, which differs from the FOIA de-class process, also will be covered.

*-Brent Evitt, Defense Intelligence Agency
-Bradley Moss, Mark S. Zaid, P.C.*

Session 1.10 – Salon 4

Basic/Refresher Track – FOIA/Privacy Sister Statutes: FOIA and the Privacy Act

While there are many similarities between the two Acts, the differences are distinct. This session compares the two Acts including processing time limits, appeal rights, fees, exemptions, litigation and more. Instructors will also present various scenarios that will help you think through the processing of each Act.

*-Karen F. Meyers
-Ramona Branch Oliver, Dept. of Labor*

Session 1.11 – Salon 1-3

Other/Specialty/Niche Track-FOIA Defining a Federal Record

What is a federal record and what is “records management?” Explore the life cycle of a record and gain an understanding of how to treat drafts, emails, and other matters including disposition schedules and understanding the definition of a record in the Federal Records Act versus the FOIA.

-Luz D. Ortiz, Dept. of Defense

4:30 pm

Daily Program Ends - Return daily evaluations, Certificates issued for July 22 only attendees

Tuesday, July 23

7:30 am-4:30 pm

ASAP Program Registration/Help Desk – 2nd Floor, Salon Ballroom Area
- Check in with ASAP Registrars (Only check in one time for all days in attendance)

7:30 am-9:30 am

Morning Refreshments – Salon Foyer – Visit with Sponsors

7:55 am-8:00 am
8:00 am-8:45 am

Welcome and Introductions for Bonus Class – ASAP President Kirsten Mitchell
BONUS CLASS – Session 2.01 – Salon 4

FOIA Requesters – Who are They and do They Want the Same Information?

Professor Kwoka’s research interests center on government secrecy, FOIA, procedural justice, and judicial review of agency actions. Professor Kwoka’s research regarding FOIA commercial requesters was featured in the *New York Times*, and she has published research on the prevalence of first-party FOIA requesters. Professor Kwoka will share the results of her research, and share her insights into ways that agencies can reduce the FOIA burden by making certain types of information proactively available and setting up alternative methods of access.

-Margaret Kwoka, Assistant Professor, Sturm College of Law, University of Denver

8:45 am-8:55 am

Stretch Break – Please be back in five minutes

8:55 am-9:00 am

Welcome, Announcements and Introductions – ASAP President Kirsten Mitchell

9:00 am-9:40 am **Session 2.02 – Salon 4**

KEYNOTE ADDRESS

The Supreme Court of the United States and Exemption 4
Thomas M. Bondy, Senior Counsel, Orrick

Argus Leader Media sued the U.S. Department of Agriculture over a denial to release each retailer’s redemption data for the Supplemental Nutrition Assistance Program (SNAP), formerly known as food stamps. After losing on appeal, the USDA issued a decision memo to comply with the court ruling. The Food Marketing Institute, representing the food retail industry, intervened, taking up the competitive harm cause, and taking the case all the way to the U.S. Supreme Court. Filed briefs indicate that the case could have major impact for diverse industries, and the definition of “confidential.” Tom Bondy, Senior Counsel in Orrick’s Supreme Court & Appellate practice will provide the background for the case, and walk through the oral arguments and the decision that was handed down on June 24 from the Supreme Court.

9:40 am – 10:00 am

Stretch Break

10:00 am-11:00 am

Session 2.03 – Salon 4

The Requesters – Moderated by Kirsten Mitchell

Come hear from three FOIA requesters—a law professor, the founder of a non-profit and a journalist—who use and study the FOIA in different ways. Topics for discussion include how requests from individuals seeking records about themselves dominate some FOIA programs—and what that means for journalists and others who seek access to government records. We’ll have time for audience questions as well.

-Margaret Kwoka, Assistant Professor, Sturm College of Law, University of Denver

-Michael Morisy, Co-Founder and Chief Executive, MuckRock

-Brad Heath, Justice and Investigations Editor, USA Today

11:00 am-11:15 am

Refreshment/Stretch Break – Salon Foyer – Visit with Sponsors

11:15 am-12:30 pm

CONCURRENT SESSIONS – PLEASE CHOOSE ONE

Session 2.04 – Salon 4

Intermediate/Advanced Track – FOIA Foreseeable Harm

In 1993, Attorney General Janet Reno set new FOIA policy saying that “. . . it shall be the policy of the Department of Justice to defend the assertion of a FOIA exemption only in those cases where the agency reasonably foresees that disclosure would be harmful to an interest protected by that exemption.” Fast forward to 2016. President Obama signs the FOIA Improvement Act of 2016, codifying the “foreseeable harm” standard and sun setting the deliberative process privilege. In late 2017 we see the first court case coming out of California with the Ecological Rights Foundation v. Federal Emergency Management Agency, finding that the Agency failed to meet its obligation under the new standard. Then in 2018, we have *Carol Rosenberg, et al., v. U.S. Department of Defense*, in which the United States District Court for the District of Columbia gave more teeth to the standard. So what does this mean for agencies and how should they be applying this new standard to the everyday processing of FOIA requests?

- Anne Weismann, CREW

-Michael Bell, Dept. of Transportation

Session 2.05 – Salon 1-3

Intermediate/Advanced Track– Privacy PRIVACY – Where the Rubber Hits the Road

This session explains how you can help your privacy program work including considerations in balancing competing needs, dealing with scarce resources, and educating others about the importance of Privacy.

- Cindy Allard, Dept. of Defense

Session 2.06 – Salon 5-7

Other/Specialty/Niche Track – The Compliance Maze: Approaches and Tools for Success

To fully comply with FOIA, there is more than just the statute—there are FOIA regulations, OMB fee guidelines, DOJ guidance, and agency FOIA policies and procedures. So how can you ensure that your office is consistent with law or policy and meeting processing and reporting deadlines? Instructors will share successful approaches on how to meet the requirements. Also, you will hear tips on agency compliance assessments from the Office of Government Information Services (OGIS), mandated to review agency FOIA policies, procedures and compliance.

-Amy Bennett, Dept. of Homeland Security

-Kirsten Mitchell, OGIS, NARA

12:30 pm-1:45 pm

Lunch – On Your Own and Opportunity to Visit with Sponsors

1:45 pm-3:00 pm

CONCURRENT SESSIONS – PLEASE CHOOSE ONE

Session 2.07 – Salon 4

Intermediate/Advanced Track – FOIA Exemption 4: It's Proprietary

Exemption 4 is one of the most burdensome and complicated of all of the FOIA Exemptions. There are many moving parts to processing these requests with a lot at stake for the businesses involved. Agency considerations and obligations in handling data submitted by business and government contractors will be covered in great detail. Learn how to recognize trade secret and confidential, commercial information. This session will also focus on submitter notice under Executive Order 12600 and contracts.

*-Ginger McCall, Public Records Advocate, OR
-Gorka Garcia-Malene, NIH*

Session 2.08 – Salon 1-3

Intermediate/Advanced Track– Privacy Privacy Scenarios

Put your privacy knowledge to use in this interactive session where instructors walk you through various scenarios and help you determine what the correct course of action should be. This has proven to be a very popular session over the last several years.

*-Jonathan Cantor, Dept. of Homeland Security
-Claire Barrett, Dept. of Transportation
-Kellie Robinson, Dept. of State*

Session 2.09 – Salon 5-7

Specialty/Niche Track - Chief FOIA Officers Council Technology Committee

The Chief FOIA Officers Technology Subcommittee is charged with assessing the FOIA IT landscape and providing actionable recommendations to assist agencies in addressing technology limitations and harnessing the promise of technology to improve the FOIA process. During this session, Subcommittee members will discuss their initial findings and ask attendees to share their experiences using technology in the FOIA process.

*-Eric Stein, Dept. of State
-Michael Sarich, Veterans Health Administration*

3:00 pm-3:15 pm

Refreshment Break – Salon Foyer – Visit with Sponsors

3:15 pm-4:30 pm

CONCURRENT SESSIONS – PLEASE CHOOSE ONE

Session 2.10 – Salon 5-7

Intermediate/Advanced Track – FOIA Exemptions 6 and 7(C): The Privacy Interest

Exemptions 6 and 7(C) are the FOIA's key privacy exemptions, and the most used exemptions government-wide. In this session, you will learn about the protections provided for personal information in general government and investigative files. It will help you understand what is considered private information in your agency's records, and the factors for balancing it with the public interest. You will also learn about categorical withholding and segregation.

*-Alina Semo, OGIS, NARA
-Joel D. Miller, Retired, FBI*

Session 2.11 – Salon 4

Intermediate/Advanced Track – FOIA Exemption 5: It's a Privilege

Requirements in the FOIA Improvement Act of 2016 directly affect Exemption 5. In addition to the new requirement, instructors will help you understand the Exemption's complexities, particularly when you need to articulate the potential harm of release. They also will discuss the elements and privileges incorporated in Exemption 5, including threshold requirements, and the elements of the deliberative process, the attorney-client, and the attorney work product privileges.

*-Ginger McCall, Public Records Advocate, OR
-Dione Stearns, Federal Trade Commission*

Session 2.12 – Salon 1-3

Other/Specialty/Niche Track-Privacy Privacy Roots: SORNs and PIAs

This session will provide an understanding of where privacy is rooted by describing the fundamentals of the Privacy Act and E-Government compliance through SORNs (Systems of Records Notices) and PIAs (Privacy Impact Assessments). The instructor will detail what a SORN is and how to merge or rescind SORNs. PIA requirements as defined in the E-Government Act of 2002 will be discussed as well as the PIA process, legal and policy distinctions, and SORNs v. PIAs.

*-Brent Bice, Dept. of Defense
-Lindsay L. Vogel, Dept. of Homeland Security*

4:30 pm

Daily Program Ends - Return daily evaluations, Certificates issued for July 22-23 attendees

Wednesday, July 24

- 7:30 am-4:30 pm ASAP Program Registration/Help Desk – 2nd Floor, Salon Ballroom Area
- Check in with ASAP Registrars (Only check in one time for all days in attendance)
- 7:30 am-9:30 am Morning Refreshments – Salon Foyer – Visit with Sponsors
- 7:55 am-8:00 am **Welcome and Introductions for Bonus Class - ASAP President Kirsten Mitchell– Salon 4**
- 8:00 am-9:00 am **BONUS CLASS - Session 3.01 – Salon 4**
Resources at the Ready for You
Knowing about and using resources wisely can make the difference in the success of a FOIA program and the utilization of staff. There are products out there that can be leveraged for different purposes. Learn some of the tricks to utilizing available, free resources, including agency toolkits, training materials and informational blogs. Panelists will walk you through some of these excellent resources to familiarize you with them and make sure you book mark them!
- Michael Sarich, Veterans Health Administration*
-Amy Bennett, Department of Homeland Security
- 9:00 am – 9:10 am Stretch Break**
- 9:10 am – 9:15 am **Welcome and Announcements – ASAP President Kirsten Mitchell**
- 9:15 am-10:30 am **Plenary Session 3.02 – Salon 4**
FOIA Origins: True Stories - An Interview of Thomas Susman by Miriam Nisbet
Tom Susman has been intimately involved in every effort to reform FOIA since it was originally passed in 1966. Throughout this time, Mr. Susman wore several hats and represented a wide variety of interests – he assisted implementing the new law at the Department of Justice, negotiated amendments as a staff member for the Senate Judiciary Committee, represented commercial entities as an attorney in private practice, litigated FOIA cases pro bono for the National Security Archive, TRAC, and others, and advocated on behalf of open government organizations as a Board Member of the National Freedom of Information Coalition, chair of the Steering Committee of the Open The Government coalition, and President of the DC Open Government Coalition.
- Miriam Nisbet, who retired from the National Archives and Records Administration in 2014, was the founding Director of the Office of Government Information Services (OGIS), National Archives and Records Administration (NARA). Prior to the creation of OGIS, Ms. Nisbet enjoyed a storied career serving both inside and outside of federal government service, but her beginnings go back to the early 1980’s when she served as the as the Deputy Director of the Office of Information and Privacy, U.S. Department of Justice.
- Mr. Susman’s and Ms. Nisbet’s paths have crossed many times over the years. During the interview, Ms. Nisbet will draw out Mr. Susman’s valuable insight into the assumptions and purpose of FOIA amendments – and share his thoughts about what assumptions were wrong.
- 10:30 am-10:45 am Refreshment Break – Salon Foyer -Visit our Sponsors!

10:45 am-12:00 pm

CONCURRENT SESSIONS – PLEASE CHOOSE ONE

Session 3.03 – Salon 5-7

Intermediate/Advanced Track – FOIA Redaction Workshop – Part I

This session is the culmination of the previous sessions on how exemptions are used during FOIA processing. Instructors will review the necessary knowledge, skills, abilities, best practices, and applicable statutes to applying redaction. Then they will launch into various scenarios requiring audience participation to determine the correct redactions and exemption cites.

-Joel D. Miller, Retired, FBI

-Karen F. Meyers

-Ramona Branch Oliver, Dept. of Labor

Session 3.04 – Salon 1-3

Intermediate/Advanced Track–Records Management: Managing Data and Privacy Risks

Strong information lifecycle and records management are more vital than ever before when it comes to managing data and privacy risks and processing data under FOIA. In this session, learn about tools and techniques to apply effective information lifecycle management and obtain new insights from your data. You will learn key components of information lifecycle management; discuss challenges in FOIA processing of sensitive electronic records and consider approaches for utilizing artificial intelligence and machine learning to manage and mitigate privacy risks and process records under FOIA. This will be a collaborative discussion regarding current capabilities and future opportunities for electronic solutions.

-Kelly Matoney, Iron Mountain

-Martha Murphy, OGIS, NARA

Session 3.05 – Salon 4

**Other/Specialty/Niche Track
Reasonable Searches: You call that Reasonable?**

We've all seen the court cases involving reasonable searches. Going back to the drawing board is not an option that anyone wants. So how can the requester and agency be confident that a thorough search for the information was performed? Presenters will walk you through the basics of a reasonable search and highlight challenges faced by both the requesting community as well as the Government. Tools and tips will include:

-Building a working relationship with Records Management components

-Getting the most out of eDiscovery Tools

-Searching Tips

-Ideal Request Phrasing

-FOIA Reasonable Search Litigation Case Examination

-Christopher Carr, Dept. of Defense

-Ryan Mulvey, Cause of Action

12:00 pm-1:30 pm

Lunch – On Your Own – Visit with Sponsors

1:30pm-2:45 pm

CONCURRENT SESSIONS – PLEASE CHOOSE ONE

Session 3.03 - Part II – Salon 5-7

Intermediate/Advanced Track – FOIA Redaction Workshop – Part II

[Continuation of session from 10:45 am](#)

-Joel D. Miller, Retired, FBI

-Karen F. Meyers

-Ramona Branch Oliver, Dept. of Labor

Session 3.06 – Salon 1-3

**Intermediate/Advanced Track –
The State of State's E-Records:
Capture and Archive**

The State Department invested in a centralized, cloud-based eRecords archive that will be interoperable with its FOIA processing solution. Learn how State has integrated powerful search tools and artificial intelligence into its eRecords archive to streamline the FOIA process.

-Eric Stein, Dept. of State

-Tim Kootz, Dept. of State

Session 3.07 – Salon 4

Intermediate/Advanced Track– FOIA Decoding FOIA Exemption 7 (A), (B), (D), (E), and (F)

Exemption 7 is FOIA's law enforcement tool dealing with records or information compiled for law enforcement purposes – literally a matter of life or death in some cases. Instructors will delve into the "how-to" of processing for these exemptions.

-Shari Suzuki, Customs and Border Protection

-Alina Semo, OGIS, NARA

2:45 pm-3:00 pm

Refreshment Break – Salon Foyer – Visit with Sponsors

3:00 pm-4:30 pm

Session 3.08 Agency Breakouts

Perhaps the most popular feature of the NTC, breakout sessions by agency will be organized based on the program attendance. All attendees are expected to attend their specific agency session. There will also be a session for "non-specific" so that all can attend a session.

Agency Non-specific – Mike Bell, Ginger McCall – Salon 4

Department of Defense – Cindy Allard – Salon 5-7

Department of Energy – Chris Morris – Studio D

Department of State and USAID– Kellie Robinson – Studio E

Department of Veterans Affairs – Barbara Swailes and Angela Pluff – Salon 1-3

4:30 pm

Daily Program Ends - Return Daily Evaluations