Federal agencies participate in thousands of court cases every year. Most such cases result in “agency litigation materials,” which this recommendation defines as pleadings, briefs, settlements, and court decisions bearing on agencies’ regulatory or enforcement activities.

Public access to agency litigation materials is desirable for at least two reasons. First, because agency litigation materials often clarify how the Federal Government interprets and aims to enforce federal law, they can help people understand their legal obligations. Second, public access to agency litigation materials promotes accountable and transparent government. Those two reasons distinguish agency litigation materials from litigation filings by private parties.

However valuable public access to agency litigation materials might be, federal law does little to mandate it. When it comes to agencies’ own litigation filings, only the Freedom of Information Act (FOIA) requires disclosure, and then only when members of the public specify the materials in which they are interested.¹ In the same vein, the E-Government Act of 2002 requires federal courts to make their written opinions, including opinions in cases involving federal agencies, available on websites.² But that requirement has not yielded “a satisfactory method of delivering usable and findable legal information,”³ partly because most courts’ websites lack functions and features that would allow users to easily identify cases about specific topics or agencies. The most comprehensive sources of agency litigation materials are the Public

³Ian Gallacher, Cite Unseen: How Neutral Citation and America’s Law Schools Can Cure Our Strange Devotion to Bibliographical Orthodoxy and the Constriction of Open and Equal Access to the Law, 70 ALB. L. REV. 491, 515 (2007).
Access to Court Electronic Records (PACER) service and paid legal research services like Westlaw and Lexis. Yet the cost, requirement to provide billing information, and certain limitations on search functionality might keep people from using them to find agency litigation materials.

Agency litigation webpages are a convenient way for people to examine agency litigation materials. For purposes of this Recommendation, an agency litigation webpage is a webpage on an agency’s website that systematically catalogs and links to agency litigation materials from cases in which the agency has participated and which relate to the agency’s regulatory or enforcement activities. The documents linked on an agency litigation webpage can include pleadings, merits briefs, amicus briefs, court opinions, settlements, and judgments. When agencies maintain up-to-date, search-friendly litigation webpages, people can visit them and quickly find important filings in court cases concerning matters of interest. Agency litigation webpages thus make it easier for people to learn about the law and to hold government accountable for agencies’ actions.

Several federal agencies already maintain agency litigation webpages. A survey of websites for 25 federal agencies of all stripes — big and small, executive-branch and independent, regulatory and benefit-oriented, and so forth — revealed a range of practices when it comes to agency litigation webpages. The survey suggests that most federal agencies do not maintain active agency litigation webpages. Among those that do, the quality of the litigation webpages varies appreciably. Some contain vast troves of agency litigation materials; others contain much more limited collections. Some are updated regularly; others are updated only sporadically. Some are easy to locate and search; others are not. In short, there appears to be no standard practice for publishing and maintaining agency litigation webpages.

Close inspections of agencies’ litigation webpages suggest three general features that make for a useful litigation webpage. First, an agency’s litigation webpage must be easy to find.

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5 See id. at 14–20 (identifying variations in agency practices).
Second, it must contain a robust collection of agency litigation materials. Third, those materials must be easy to search and sort. Creating a useful litigation webpage takes time, money, and effort. However, the agency personnel responsible for creating some of the Federal Government’s most impressive agency litigation webpages report that the benefits substantially outweigh the costs.

This Recommendation offers best practices and factors for agencies to consider in making their litigation materials available on agency litigation webpages. It recognizes that agencies have unique missions, litigation portfolios, and programming and financial constraints, and that those considerations might reasonably affect how agencies incorporate the substance of this Recommendation. To the extent agencies must expend additional resources to implement this Recommendation, they should be mindful that upfront costs may yield even greater benefits over time.

RECOMMENDATION

Providing Access to Agency Litigation Materials

1. Agencies should provide access on their websites to agency litigation materials, including documents like pleadings, briefs, court opinions, settlements. In determining which agency litigation materials to include on their websites, agencies should ensure that they have implemented appropriate safeguards to protect relevant privacy and business interests implicated by the disclosure of litigation materials. Among other things, each agency should implement a protocol to ensure that, before a document is posted to the agency’s litigation webpage, the lawyers responsible for drafting and filing the document have reviewed it and certified that it does not contain private or protected information.

2. Agencies that choose to post all or most of their litigation materials should consider grouping together links to those materials on a single, dedicated webpage — what this recommendation refers to as an agency litigation webpage. If an agency is organized such that different divisions within it are responsible for different classes of litigation, operational efficiency may ultimately counsel in favor of the agency’s maintaining
multiple litigation webpages, with each webpage grouping together links to the litigation materials relevant to a different division.

Making It Easy to Locate Agency Litigation Webpages

3. Agencies should make sure that website users can locate the agencies’ litigation materials easily on the agencies’ websites. Agencies can do this by:
   a. Displaying links to agency litigation webpages in readily visible locations on the homepage for the agency’s website; and
   b. Maintaining a search engine and a site map or index, or both, on the agency’s homepage.

4. Agencies that maintain litigation webpages should ensure that, when website users enter litigation-focused terms — like court, brief, settlement, or lawsuit — in the main search engines on the agencies’ websites, the search results prominently display a link to the agencies’ litigation webpages.

Making It Easy to Find Relevant Materials on Agency Litigation Webpages

5. Agency litigation webpages should group together materials from the same cases. They might, for example, provide a separate docket page for each case, with a link to the docket page on their litigation webpages.

6. Agencies should offer general and advanced search and filtering options within their litigation webpages. The search and filtering options could, for instance, allow users to sort, narrow, or filter searches according to criteria like action or case type, date, topic, case number, party name, or specific words and phrases, along with any other criteria the agency decides are especially useful given its litigation activities.

Commented [MT1]: To be discussed: What are the benefits and drawbacks of sub-agencies linking to their parent agencies’ litigation webpages, rather than maintaining their own litigation webpages?