

July 12, 2022

Andrew Fois  
Chairman  
Administrative Conference of the United States  
1120 20th Street NW, Suite 706 South  
Washington, DC 20036

**RE: Request for Comments on the *Disclosure of Agency Legal Materials* Project**

On behalf of the American Association of Law Libraries (AALL), the only national association representing law librarians and legal information professionals, I write in response to the Administrative Conference of the United States' (ACUS) request for comments on the *Disclosure of Agency Legal Materials* project.

AALL is excited about the ACUS' interest in developing standards for how agencies make legal materials accessible to the public. Our comments focus on improvements to public access to legal information and potential revisions to federal disclosure laws to support the needs of law librarians and legal information professionals. We hope our feedback will help guide ACUS recommendations.

**Question 1: What types of agency records should ACUS consider to be “agency legal materials” for purposes of this project?**

The *ACUS Office of the Chairman Statement of Principles for the Disclosure of Federal Administrative Materials* (*ACUS Statement of Principles*), published on June 16, 2022, describes many types of federal agency records that would fit well under the definition of “agency legal materials”. This includes:

- Rules and regulations
- Guidance documents
- Decisions and supporting materials (including pleadings, motions, and briefs) related to adjudicative proceedings, regulatory matters, and enforcement activities

These resources are frequently used by law librarians and legal information professionals to help law library patrons—including attorneys, faculty, students, and members of the public—understand how federal laws are being interpreted and applied.



AALL also recommends that legal-related data sets, non-confidential agency memoranda, and cooperation agreements with other federal agencies and international bodies be included under the definition of “agency legal materials”. The [U.S. Federal Trade Commission](#) is a good example of an agency providing the public with access to all these types of legal materials in an organized and straightforward way.

**Question 2: What obstacles have you or others faced in gaining access to agency legal materials?**

Public access to legal materials varies greatly by agency, which makes it challenging for law librarians and legal information professionals to provide consistent and reliable access to agency legal information. Agencies also rarely provide thorough explanations of what types of legal materials are published on their websites, which makes it difficult to determine whether information is unavailable or just hard to find. This is particularly true for adjudicative materials and guidance documents, which are very useful for legal research but often difficult to locate.

**Question 3: Are there certain types of agency legal materials or legal information that agencies are not making publicly available that would be valuable to you or others?**

Historical legal materials—including foundational documents and superseded materials—are valuable to law librarians and legal information professionals but are typically not made publicly available on agency websites. Some agencies, including the [U.S. Department of Agriculture](#) and the [U.S. National Archives and Records Administration](#), have made extensive collections of historical materials available to the public online. These materials are frequently used in legal research to provide context to laws and agency decisions.

Public access to internal agency memoranda that are not classified would also be helpful because these materials describe important program guidance and policy requirements. Some agencies, including the [U.S. Food and Drug Administration](#) and the [Occupational Safety and Health Administration](#), make memoranda available to the public in a central location on their websites, which is very useful. However, most agencies, including the [U.S. Environmental Protection Agency](#) and the [U.S. Department of Interior](#), provide access to only a selection of memoranda. Frequently, these memoranda are not available in a central location but rather linked to from press releases or other documents.

**Question 4: What types of legal materials should agencies proactively disclose to the general public?**



AALL agrees with *Principle 1* of the *ACUS Statement of Principles*, which states that federal agencies should proactively disclose administrative materials including rules and regulations, guidance documents, and documents related to adjudicative proceedings, regulatory matters, and enforcement activities. These materials help the general public understand agency activities, follow agency actions, and navigate any agency processes or rules that may impact them.

For copyrighted materials, AALL supports *Principle 10* of the *ACUS Statement of Principles*, which states that agencies should seek to obtain consent to publish copyrighted materials or identify methods to make the information available to the public at the least possible cost.

The [U.S. Patent and Trademark Office](#) is a good example of an agency providing proactive public access to many types of legal materials, including regulatory information, guidance documents, and Patent Trial and Appeal Board decisions. In addition, the [U.S. Department of Justice](#) and [U.S. Securities and Exchange Commission](#) provide robust online access to legal materials along with research guides and clear descriptions of what information is available to the public. These agencies' websites may be helpful for ACUS to consider as models for proactive public access.

**Question 5: For agency legal materials that should be proactively disclosed, where or how should agencies make them publicly available (on agency websites, in the *Federal Register*, or elsewhere)?**

Law librarians and legal information professionals would benefit from public access to legal materials on agency websites and in the *Federal Register*. Increasing access to agency legal materials on the U.S. Government Publishing Office's [govinfo](#) website would also benefit legal researchers because *govinfo* is a trusted and user-friendly source for many free official agency publications from all three branches of the federal government.

**Question 8: Are there certain best practices regarding disclosure of legal materials on agency websites that should be required by statute (e.g., indexing of legal materials, search functions to help find legal materials)? If so, should these practices be required for all legal materials or only certain types of legal materials?**

AALL supports *Principle 8* of the *ACUS Statement of Principles*, which recommends that agencies create digests, indexes, and guides to assist users in understanding administrative legal materials. Materials should also be tagged with keywords and posted in searchable full-text formats. Requiring these practices for all legal materials



would help law librarians and legal information professionals more easily locate important information that law library patrons need.

The *AALL Guiding Principles for Public Access to Legal Information on Government Websites* provides other suggestions for open, equitable, and reliable online access to legal information that may be helpful to ACUS as it works on this project.

**Question 10: What other statutory reforms might be warranted to ensure adequate public availability of agency legal materials?**

AALL supports updates to the *Freedom of Information Act (FOIA)*, to ensure proactive disclosure of frequently requested records in machine-readable formats. Specifically, AALL advocates for revisions to Section 552(a)(2) of title 5 of the *United States Code* to require that agencies proactively publish testimony submitted to Congress and unclassified reports, including Inspector General reports, on their websites. The addition of testimony and unclassified reports to the list of materials under Section 552(a)(2) that agencies are required to proactively publish would help law librarians and legal information professionals ensure more timely and comprehensive access to these materials.

**FINAL COMMENTS**

Thank you for the opportunity to provide feedback on the *Disclosure of Agency Legal Materials* project. Please let us know if we can provide any additional information as this project continues.

Sincerely,

A handwritten signature in black ink that reads 'Diane M. Rodriguez'. The signature is written in a cursive, flowing style.

Diane M. Rodriguez  
President, 2021-2022  
American Association of Law Libraries