

Comment from Government Member Robert F. Stone  
November 20, 2020

Before the last ACUS meeting on Protected Materials in Rulemaking Dockets, I received the following thoughtful comment from Michelle Walker of our docket office:

The one major concern we have relates to an underlying assumption that there is a certain level of expertise and enough docket staff across the board to implement some of their suggestions. While these are only recommendations and ultimately it would be up to each agency to determine if they want to adopt them, suggesting that agencies would summarize restricted and redacted materials could result in a substantial workload burden and, in some cases, require specialized training.

In reviewing the draft ACUS recommendations, I finally concluded that Michelle's concerns, which I share, didn't really fit anywhere because ACUS had neatly sidestepped the issue of agency resource requirements to comply with the recommendations. First, the heading before Recommendation 6 (as it read for the meeting), "Recommendations for Agencies **that screen comments** for Protected Material..." [bold added], is neutral on how agencies make the determination to screen comments. An unstated consideration would have to be limitations on staff resources and expertise. Second, in Recommendation 6, the first sentence notes, "Agencies that screen comments...either as required by law or **as a matter of agency discretion...**" [bold added]. Again, agency discretion would surely encompass matters of agency resources to undertake the screening of comments for protected material.

I now wonder if it would be worthwhile to raise the issue of agency resources directly as part of a background discussion for the plenary session. As indicated above, the issue is covered, sort of, but any agency reviewing the recommendation might reasonably be concerned about resource requirements implicitly being imposed on them.

Thank you for your consideration.