

Hi,

Here are a few comments/suggested amendments for this recommendation.

Two general comments:

- The strongly implied assumption is that these materials should be available free of charge. That is the premise of several statements (e.g. the statement that upfront costs will be offset by “tangible benefits” that don’t include fees), and is implicit in the very idea of posting to the website. But I think it would be worth making explicit. Were it not for PACER, this would seem unnecessary. But really there are two models out there, PACER and regulations.gov, and one of their huge differences is that one is free and other is not. The choice between those models is significant and should be explicit.
- As written, the recommendation frequently uses the term “disclose” or “disclosure.” I would steer away from that term, because it can mean many different things, especially in the world of FOIA, including “provide on request.” There are three spots where it seemed especially problematic. First, in the third paragraph (lines 18-21), especially at line 20. The whole point is that these things are supposed to be publicly available without request. Section 552 doesn't say "disclose," it says "shall make available for public inspection in an electronic format." You might consider tracking the statutory language or in general using some variation of "make publicly available" rather than "disclose." Second, at line 48. The phrase "disclosure requirements of FOIA" is potentially confusing, many would read it to refer to answering FOIA requests. If you want to stick with “disclosure,” I would insert “affirmative” before it. Third, in line 49 I would substitute “post” or “provide” for “disclose.”

Two minor substantive comments:

- Line 64. On first reading, I thought it would be worth adding “, for example, by including a separate docket page for each adjudication.” Then I went back and looked at the underlying report and saw that it had done more or less exactly that. Perhaps that specification was deleted as unnecessary, but for what it’s worth I thought it was clarifying and helpful.
- Lines 67-69. Should this be two separate sub-paragraphs, a. and b.? It feels like two separate suggestions. And the “as well as by” is awkward at best and arguably incoherent (what was the first thing?).

A few stylistic suggestions:

- Lines 12-14. I would make this into two sentences and slightly change the wording: “When, as is often the case, adjudicative proceedings involve the application of governmental power to resolve disputes involving private parties, the associated records are of public importance.”
- Line 17 -- replace “laws and procedures governing proceedings” with “the relevant substantive law and procedural requirements.”
- Line 37 – Substitute “It is drafted with recognition that” in place of “It is offered with the knowledge that”. [That may not be the best phrasing either, but the point being that the sentence is meant to reassure, but it’s not that reassuring to tell someone you have knowledge of a problem, you need to say that you took the problem into account.]

- Lines 39-45 seem a little out of place. They are part of the affirmative case for making these materials available. Perhaps move to 8-17?
- Line 46 – “maintaining links to” is a little cumbersome and may be inaccurate. How about “consider posting on their websites copies”?
- Line 52 – I tripped over “agencies’ internal processes.” I’m not sure agencies have “external processes.” I would suggest either “agencies’ processes” or “agencies’ adjudicatory processes”
- Line 71 -- perhaps “specify” in place of “identify”?

Hope these are helpful,
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