

Art of Access

Aquiring Educational Records

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Credits: These handouts are the culmination of two decades of FOI training, starting with the SPJ newsroom training program in 2004 with trainers Cuillier, Charles N. Davis and Joel Campbell. Some of this information has been presented at a variety of conferences, but this is all pulled together in one handout. Also, some materials below come from "The Art of Access: Strategies for Acquiring Public Records," by Cuillier and Charles N. Davis (second edition 2020). This handout was last updated (and links checked) on March 24, 2025.

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Educational record ideas

Below are some ideas for public records about education. Some are available online (free data downloads), but many you have to actively order through a public record request/order.

- **Directory information.** Anything related to the education of a student is secret because of FERPA, except for directory information, including name, year, home address, phone number, date of birth etc. (unless the parent or adult student wishes the information to not be disclosed). See <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>. Also, serious criminal incidents are public.
- **School test scores.** To identify poorly performing schools. Check with individual schools, school districts or the state board of education.
- **Census.** Demographic data available down to the block group level and over time can be used to analyze shifts in community demographics, including in migration, income, race, education, gender, and age. Challenging to burrow through the Census Web site (<https://www.census.gov/>), but it's all there.
- **Civil lawsuits.** To make sure civil cases are handled equitably and disputes resolved fairly. When a person sues another person (or a school), the case ends up in civil court. Examples of civil cases include malpractice, child support, divorce, libel, paternity, property rights, restraining orders and breach of contract. Superior Court handles big cases and municipal courts (small-claims) handle the little things (like you see on *Judge Judy*).
- **Nonprofit 990 forms.** To investigate nonprofits (e.g., private schools). Can find a variety of information about nonprofits' income, expenses and officers through the 990 forms they file annually. To see 990 forms, search at the IRS website, <https://www.irs.gov/forms-pubs/about-form-990>, or ProPublica's Nonprofit Explorer, <https://projects.propublica.org/nonprofits/>, or GuideStar (now Candid), at <https://www.guidestar.org/>.
- **Public records orders.** To find what public records are being ordered from schools by businesses, citizens, government employees and journalists. Order from the public records officer copies of the public records orders and any log used to track orders.
- **Health inspections.** To make sure the public is protected from unsanitary conditions at school cafeterias and eateries.

- **Audits.** To monitor problems in schools, particularly financial woes. Look carefully to find any irregularities – often clouded by vague terms and wishy-washy language. Ask to get more details.
- **Budgets.** Detailed budgets are available before and after approval. Can be helpful to see what departments are getting more money over time and what areas are getting less funding. Get them from the agency's budget officer.
- **Calendars.** To find out how top officials are spending their time. Look at their calendars, or day schedules, to see who they are meeting with and the extent of their workload. Should also be able to get travel expenses. Order from the office you are interested in, such as the superintendent's office or university president's office if you want to see the calendar.
- **Contracts.** Allows you to find out who is benefiting from government projects. Should include the amount agreed upon, the amount paid (often more), who the money went to, etc. Contact an agency's business office.
- **E-mail.** To monitor government function and make sure business that should be conducted in public isn't being handled secretly via e-mail.
- **Elections.** To see who is funding candidates and campaigns, particularly local school board elections.
- **Employees.** To identify cronyism and find former employees. Order employee names, titles and salaries. Employee home addresses and home phone numbers, however, are generally not public.
- **Expense reports.** To monitor government spending and see if government employees are cheating the system. Check with the business office of an agency. Can ask for credit-card logs as well.
- **Meeting minutes.** To monitor school boards and other government bodies. Meeting notices, agendas and minutes are almost always public. Check with the clerk's office at the respective agency.
- **Personnel records.** Confirm whether someone is a public employee and identify bad workers through disciplinary records. Not always public in all states, so can be difficult to get, such as disciplinary actions against teachers. Easier to get for high-ranking officials because a greater public interest. Performance evaluations are public in many states.
- **Retention schedules.** To find out what records an agency keeps and when it purges them. Most public agencies have established retention schedules to determine how long they will keep different records and when they can get rid of them. Check with the individual agency to find its retention schedule, usually held by a clerk or records officer.
- **Salaries.** To find cronyism and disparity in pay. Names, titles and salaries of public employees are almost always available. Also, get overtime pay and actual pay (not just budgeted salary) to find janitors

who make more than the principal. Also, a good way to find former employees.

- **Claims.** If someone feels a government agency owes them compensation for damages (slipping on a sidewalk, hit by school bus, etc.), they often file a claim before filing lawsuit. Check with the risk management officer or attorney for the agency.
- **Court records.** To find if someone (e.g., teacher or professor) has a criminal background or has been sued in civil court. Also to monitor trends in a variety of criminal justice issues, including crime, sentencing, racial profiling (speeding tickets), and judge performance. In general, court records are public unless they have been sealed by a judge for a specific reason.
- **Parking tickets.** To identify parking scofflaws and trends and fairness in ticketing on campuses (any special persons get their tickets waived?).
- **Sex offenders.** To find if sex offenders live close to vulnerable populations (e.g., close to schools, or living in college dorms). Note that a variety of studies have found registries to be relatively inaccurate, so the person may or may not actually live where the registry says the person lives.
- **Title IX investigations.** Data you can download from the Department of Education Office for Civil Rights, which provides pending cases of Title IX discrimination at secondary and post-secondary schools (not in a CSV – need to scrape the 12,000 complaints, but can pull them up 1,000 at a time). <https://ocrcas.ed.gov/open-investigations>
- **Private schools.** National Center for Education Statistics gathers data about private elementary and secondary schools, including size, enrollment by sex, number of teachers and other metrics. <https://nces.ed.gov/surveys/pss/index.asp>

Sample records at public universities

David Cuillier

The following are 16 records representative of what is available at a public university, using the University of Arizona as an example. These records are likely to yield stories and at the same time are presumptively public, and therefore easier to get within a semester. I've had students acquire all of these databases/records for classes, so if it's been done before it can be done now. Look for similar records at your public university of choice.

1. Problems Exposed Problems Fixed: Academic Program Reviews

Every academic department/program at the UA is required to undergo an extensive academic program review every seven years to make sure it's up to snuff. The final reports provide a rundown of good things and bad things of a department. Weak departments can (and should!) be eliminated or kicked in the rear end to step it up. See more information at <https://academicaffairs.arizona.edu/apr>, check out the schedule of what departments have been reviewed most recently at <https://academicaffairs.arizona.edu/apr-schedule>, and request from the provost's office to get copies of the self-studies and final reports for reviews done within the past five years (electronic, so should not be copy costs).

2. Good, Bad, Ugly: National Accreditation Reports

Many professional programs (medicine, pharmacy, journalism, etc.) go through national accreditation, which also identifies weaknesses. Just ask a department if any of its programs are nationally accredited, then ask for the name of the accrediting body (sometimes on their websites). Then request their last self-study and report by the accrediting body. As an example, see the 2017-18 accreditation report for the School of Journalism, at <http://www.acejmc.org/wp-content/uploads/2018/05/Arizona.pdf>

3. Show Me the Money: Claims

Before anyone can sue an agency such as a public university, it must file a claim asking for money first. These records are kept by the university's Risk Management office, which seeks to minimize such payouts. These records show problems before they get to court. For more information, see <https://risk.arizona.edu/insurance/liability-coverage-and-claims>

4. Crash Course: Vehicle Accidents

Universities own a lot of vehicles, and when one crashes it is reported. Ask for all the crash reports and/or data of crash/damage of university vehicles going back years to spot trends and problem areas. Similarly, the university maintains records for when employees are hurt. Request to see all that data from Risk Management. More information is at <https://risk.arizona.edu/insurance/incident-reporting>

5. Loved and Hated: Student Course Survey Data

Few people realize that the scores reported in Student Course Surveys (formerly Teacher Course Evaluations) are collected and provided online for students and others to see. Put in a request for all that data for all classes. The university might argue that they are not public since they require a UA password to access, but it's a weak argument when 45,000 students and 15,000 employees have access. Not really private, right? Students have acquired that data in the past for news dissemination, so it should continue to be public, including the scores, class, and instructor's name. Look at what programs have really low scores and then find out why.

6. Big Spenders: Expense Reports

You can request expense records for individual departments, colleges or administrative departments, to see how much is spent on travel, conferences, meetings, or frivolous extras. Just request all expenses, to the very individual item, for a college or department. Also, can request P-card data – that's a university credit card that people use to buy stuff. Journalists elsewhere have requested these sorts of records to find university officials spending university funds on strip clubs, exotic vacations, TVs, etc. Heck, 20 years ago the journalism school's business manager used the P-card to buy furniture and other stuff, resulting in her firing and jailing. Where there's money, there's temptation.

7. Death Traps: Fire Marshall Inspection Reports

The City of Tucson Fire Marshall inspects buildings to make sure they are safe. Request inspection records for all buildings in and around the UA. You might find some buildings are actually unsafe. At other campuses, students have found Greek houses, in particular, to be dangerous.

8. Creepers Among Us: Sex Offenders

The Department of Public Safety sells its state sex-offender registry database for \$25 (see <https://www.azdps.gov/services/public/offender>). Buy the list and then cross it with the UA employee directory and student directory. Because they typically don't include date of birth or other unique identifiers in the employee/student directories, you'll need to triple-check matches are legit and not just someone with the same name.

Students in the past found actual students and employees on the registry. At minimum, can look at all the offenders living in student neighborhoods around campus (quick online look at <https://www.azdps.gov/services/public/offender>).

9. Easy "A": Grades by Class, Department, and Instructor

The university tracks all the grades given out in every class. You can request to see that grade data (without student names), including a field for instructor's name, class, department, semester. Get it going back over 10 years to see if grade inflation is going on, as well as the easy graders and hard graders. A student analyzed that data in 2009 for the Tucson Weekly: <https://www.tucsonweekly.com/tucson/easy-as/Content?oid=1149066>. Is it still happening?

10. Boot Hill: Parking Tickets

You can request parking ticket data from Parking & Transportation for the past years, which can show where tickets are handed out the most, trends in most ticketed days (during games/graduation?), etc. Make sure to get the disposition field to find out how many tickets are waived. Even better, ask for the name field to see if donors, athletes, professors, ASUA officers, etc., get their tickets waived. The university might argue that name is private, saying tickets are protected under FERPA as "educational records." That is total B.S., and every university that has argued that in court has lost. Definitely worth suing over and shaming. After all, if parking tickets are educational records, why do they put them out there for everyone to see (on windshields)?

11. Two-Wheeled Woes: Bike Thefts and Accidents

Request bike thefts and accident data from campus police for the past five to 10 years to find trends and problem areas. Should include address, date, and other information. Are there areas that are particularly bad? If so, what should be done to make it better?

12. Dorm Do-Badders: Dean of Students Records

The Dean of Students collects data about violations in residence halls, Greek houses, and other parts of campus. You can request to see that data (with names redacted) for the past five to 10 years to identify trends and trouble spots.

13. Clubbing: Student Government Club Fee Disbursement

Request all student government club disbursements for the past five years to see where student fees are going. Ask to look at the individual requests to find particularly odd/questionable requests. For example, one year a medical student club asked for money to buy beer, pizza, and a cadaver so they could practice cutting up bodies while socializing (it was denied).

14. Amateur Sports? Ticket Revenue

Request ticket revenue data from UA Athletics for all of the sports for the past 10 years to find out where the money comes from and if it's going up or down. Compare to other major public universities.

15. Business of Education: Contracts

Request contracts that the university has with commercial enterprises, such as vendors in the student unions, the sole soda provider (Coke), selling of student directory information to credit card companies, PR firms for advertising, lobbying expenses for D.C./Phoenix, etc.

16: Day by Day: Administrator Calendars

Request the schedules/calendars of top administrators, such as the president, provost, deans, etc., to get a sense for what they do all the time. Are they always traveling? Do they ever meet with real people (e.g., students), or are they busy raising money and administrating?

Creating a document state of mind

- 1. Follow the money.** Ask for the detailed line-item budget, maybe as an Excel file, that details all spending, not just total expenses and total revenues. Look for other documents that might outline the details. Where is that money going?
- 2. Map the activities.** Now, map the agency to find out what it does. Look on their websites and you'll often find organizational charts that can help jump-start this process. What sorts of documents might be generated by the activities of this office? The mayor is awarding a \$100,000 grant to a local arts group. What questions does that raise in your documents-driven mind? Look at blank forms that people fill out to get a sense of what is kept.
- 3. Circle of light.** If you are backgrounding a person, get a sheet of paper or a white board and write the person's name in the middle. Around the name write down different roles the person has in life (e.g., married person, business owner, driver, pet owner, property owner, pilot). Then write down for each role the records available.
- 4. Look at records lists.** Many public offices maintain an index of records or retention schedule – a master list of documents routinely filed. Also, ask for a log of previous public records orders. You'll get a sense for what kinds of records the agency keeps.
- 5. Train the agency.** Get the agency used to you asking for records. Ask for tame records, such as reports, expenses and contracts. Ask for e-mails of the mayor for the past week. Then work up from there. When you find you really need those e-mail records they'll be accustomed to giving out that kind of information.
- 6. Blend in.** Each week take a few hours to go to your agency and talk to workers. Ask what they do, what they are working on, and what records they keep.
- 7. FOI First on Fridays.** Every Friday (or whatever day of the week works best for you), submit a public records order. Track your orders in a notebook and follow up. Get in the habit of doing it.
- 8. Explain to the public.** Get in the habit of explaining what records your information is based on and how people can get them on their own. Create a "Doc Box" for each story explaining the basics of the record, what's in it, and where to get it.

Backgrounding government

State and local agencies in most states are required to provide a records retention schedule. Here are a few examples of how to background your local government agencies to find out what documents they have that can help you:

Go to the city and ask for the master index or retention schedule. Here's a sample list of records in San Francisco's index:

- Administration
- Accident-Injury Reports
- Administrative Files
- Audit Reports
- Budget Files
- Check Payments
- Conflict of Interest Form 700
- Contracts & Grants
- Discrimination and Harassment Complaints
- Draft Contracts
- Family Medical Leave Act Records
- General Correspondences
- Medical Information
- Office Expenditure Documents
- Payables (Invoices/ Vendors)
- Payroll Reports/ Timecards & Related Documents
- Personnel Files
- Policies/Procedures
- Purchase Orders (copy)
- RFA, RFP, RFQ(s) & Records
- Receipt/Deposits
- Travel Request (copy)
- Work Orders
- Worker's Compensation Record

Just think for a minute about how many stories lie in this data!

Now that is thinking documents-first!

Tapping into FOI research

Yes, academic research CAN be practical! On the following pages you will find examples of research studies regarding freedom of information that have useful applications for journalists. These are just a sampling of the growing body of research accumulated in just the past 20 years.

Benefits to you

The studies below are just a small sample of the hundreds out there, and can be used several ways:

- Cite relevant studies in your request letters and appeal letters.
- Use them to improve legislation in your state or in FOI lawsuits.
- Contact the authors as sources when covering FOI issues.
- Apply the practical techniques found through empirical research to improve your odds at getting records when you need them.

Retrieving the papers

Some of the papers below you can get online for free (links provided). Some you must retrieve through a publisher online. Here are some tips in acquiring copies of the studies, often published in peer-review journals (and therefore, ironically, difficult for the public to acquire):

1. Google the title and author. Often a link to the article comes up, particularly if the author posted it on platforms that support open access.
2. If the article is hosted by a journal that charges, consider paying the fee to download it.
3. Avoid the charge by visiting a nearby university library or public library to see if you can use their online databases to retrieve it for free (and to look at further research!).
4. Google the author's name and university to find an email, and then directly request a free copy from the author as a PDF.

Tell us what you want studied

If you have ideas for future studies, that would help you do your job better, let me know (cuillierd@ufl.edu). Bridging the academic-practice gap is essential if we are going to strengthen FOI and make the world better!

FOI makes a difference

Studies to convince the public, sources and lawmakers that transparency and records-based investigative reporting have concrete societal benefits!

- **Every \$1 spent on doc reporting reaps \$287 in societal benefits**
Hamilton, J. (2016). *Democracy's Detectives: The Economics of Investigative Journalism*. Cambridge: Harvard University Press.
- **FOI reduces corruption and improves financial management**
Cucciniello, M., Porumbescu, G., and Grimmeliikhuijsen, S. (2017). 25 years of transparency research: evidence and future directions. *Public Administration Review*, 77(1), 32-44.
- **Records central to 90% of stories submitted to IRE contest**
Lanosga, G. and Martin, J. (2017). Journalists, sources, and policy outcomes: Insights from three-plus decades of investigative reporting contest entries. *Journalism*, 19(12), 1676-1693.
- **Sex offender registries reduce relapse**
Levenson, J. and Cotter, L. (2005). The effect of Megan's Law on sex offender reintegration. *Journal of Contemporary Criminal Justice*, 21(1), 49-66.
- **Transparency reduces drinking water health violations**
Benhear, L. and Olmstead, S. (2008). The impacts of the "Right to Know": Information disclosure and the violation of drinking water standards. *Journal of Environmental Economics and Management*, 56, 117-130.
- **Food safety records decreases consumer complaints**
Almanza, B., Ismail, J., and Mills, J. (2002). The impact of publishing foodservice inspection scores. *Journal of Foodservice Business Research*, 5, 45-62.
- **Proactive release increases public confidence in Social Security**
Cook, F., Jacobs, L., Kim, D. (2010). Trusting what you know: information, knowledge and confidence in Social Security. *Journal of Politics*, 72(2), 397-412.
- **Two-thirds of citizen record requests have a public good**
Berliner, D., Bagozzi, B., and Palmer-Rubin, B. (2018). What information do citizens want? Evidence from one million information requests in Mexico. *World Development*, 109, 222-235.
- **Newspaper closures cause municipal bond spikes, raising taxes**
Gao, P., Lee, C. and Murphy, D. (2018). Financing Dies in Darkness? The Impact of Newspaper Closures on Public Finance.
<https://www.brookings.edu/wp-content/uploads/2018/09/WP44.pdf>

Rating the states

Attempts to rate states' transparency by looking at the laws, websites, and asking experts. See how your state ranks.

- **Ranking the states' compliance with FOI law**
Cuillier, D. (2019). Bigger stick, better compliance: Testing strength of public record statutes on agency transparency in the United States. Presented at the Global Conference on Transparency Research, Rio de Janeiro, Brazil, June 26, 2019. Available at bit.ly/FOIratings
- **State websites rated for proactive posting of financial records**
Follow the Money (2018). U.S. Public Interest Research Group report available at <https://uspirgedfund.org/reports/usf/following-money-2018>
- **Journalists rate the states on their FOI laws and compliance**
Center for Public Integrity (2015). How does your state rank for integrity? Available at <https://publicintegrity.org/accountability/how-does-your-state-rank-for-integrity/>
- **Brechner Center state FOI law ratings (ended in 2008)**
Citizen Access Project (2008). Do you in the sunshine or the shade? University of Florida Brechner Center for Freedom of Information. Available through the Wayback Machine at <https://web.archive.org/web/20070112102117/http://www.citizenaccess.org/>
- **Rating five legal provisions in state laws**
Better Government Association and NFOIC (2007). States Failing FOI Responsiveness, a report by Charles N. Davis and the National Freedom of Information Coalition. Available at <https://www.nfoic.org/states-failing-foi-responsiveness/>

Request strategies

- **Formal letters 3 times more effective than informal requests**
Worthy, B. John, P., & Vannoni, M. (2016). Transparency at the parish pump: A field experiment to measure the effectiveness of freedom of information requests in England. *Journal of Public Administration Research and Theory*, 27(3), 485-500.
- **Legalistic letters faster and more productive than friendly**
Cuillier, D. (2006). Honey v. vinegar: Testing compliance-gaining theories in the context of freedom of information laws. *Communication Law and Policy*, 15(3), 203-229.

- **Higher social status results in better response**
Michener, G. & Rodrigues, K. (2015). Who wants to know? Assessing discrimination in transparency and freedom of information regimes. Presented at the 4th Global Conference on Transparency Studies, Switzerland, June 4-6, 2015.
- **Requester with clout charged lower fees than average schmuck**
Lagunes, P. & Pocasangre, O. (2017). Dynamic transparency: An audit of Mexico's Freedom of Information Act. American Development Bank paper, IDB-WP-836.
- **Journalists get better response than average citizens**
Darbishire, H. and Carson, T. (2006). Transparency and silence: a survey of access to information laws and practices in 14 countries. Open Society Justice Initiative. Available at <https://www.issuelab.org/resources/7736/7736.pdf>
- **More specifics result in better compliance**
Columbia Journalism Review textual analysis of 33,000 FOIA requests <https://www.cjr.org/analysis/foia-request-how-to-study.php>
- **Custodians more helpful to those who are specific, sympathetic**
Bush Kimball, M. (2003). Law enforcement records custodians' decision-making behaviors in response to Florida's public records law. *Communication Law and Policy*, 8, 313-360.
- **Agencies more likely to respond if mention compliant agencies**
ben-Aaron, J., Denny, M., Desmarais, B., & Wallach, H. (2017). Transparency by conformity: A field experiment evaluating openness in local governments. *Public Administration Review*, 77(1), 68-77.
- **Appeal letters cut loose records a third of the time**
Bridis, T. (2018 March 12). U.S. sets new record for censoring, withholding gov't files. *The Associated Press*. <https://www.apnews.com/714791d91d7944e49a284a51fab65b85>
- **Glomar responses creeping into state/local level (don't let it!)**
Wagner, A.Jay (2016). Controlling discourse, foreclosing recourse: The creep of the Glomar response. *Communication Law and Policy*, 21(4), 539-567.

Context and justification

Remind the public and legislators why we have these laws, and why transparency should be the default not a special right or extra benefit.

- **Congress intended records to be disseminated freely**
Quinn, A. (2003). Keeping the citizenry informed: early congressional printing and 21st century information policy. *Government Information Quarterly*, 20, 281-293.
- **Copy fees recoup tiny percentage of costs – just .01 percent**
Wagner, A.J. (2017). Essential or extravagant: Considering FOIA budgets, costs and fees. *Government Information Quarterly*, 34(3), 388-395.
- **Many nations (not the U.S.) have declared FOI a human right**
McDonagh, M. (2013). The right to information in international human rights law. *Human Rights Law Review*, 31(1), 25-55. Available at <https://www.corteidh.or.cr/tablas/r30698.pdf>
- **U.S. FOIA rated among weakest in the world (78th)**
Global Right to Information Rating, out of 140 countries with FOIA laws (2024). Access Info Europe and Centre for Law and Democracy. Available at <http://www.rti-rating.org/country-data/>. Also, see: Mendel, T. (2016). The fiftieth anniversary of the Freedom of Information Act: How it measures up against international standards and other laws. *Communication Law and Policy*, 21(4), 465-491.
- **Not “media” issue; Only 2-14% requests submitted by journos**
Kwoka, M. (2016). FOIA, Inc. *Duke Law Journal*, 65. Also, see: Silver, D. (2016). The news media and the FOIA. *Communication Law and Policy*, 21(4), pp. 493-514.
- **Corporate lobby carved out exemptions for own interests**
Relly, J.E. and Schwalbe, C.B. (2016). How business lobby networks shaped the U.S. Freedom of Information Act: An examination of 60 years of congressional testimony. *Government Information Quarterly*, 33(3), 404-416.
- **Transparency best when government leaders outline benefits**
Williamson, V. and Eisen, N. (2016). The impact of open government: Assessing the evidence. Center for Effective Public Management at Brookings Institution.
- **FOI varies by community, regardless of law, based on culture**
Grimmelikhuijsen, S., Porumbescu, G., Hong, B., and Im, I. (2013). The effect of transparency on trust in government: A cross-national comparative experiment. *Public Administration Review*, 73(4).

- **Communities with female mayors more transparent**
Spac, P., Voda, P., and Zagrapan, J. (2018). Does the freedom of information law increase transparency at the local level? Evidence from a field experiment. *Government Information Quarterly*, 35, 408-417.
- **Larger cities better compliance than small towns**
Spac, P., Voda, P., and Zagrapan, J. (2018). Does the freedom of information law increase transparency at the local level? Evidence from a field experiment. *Government Information Quarterly*, 35, 408-417.
- **Communities with competing groups post more info proactively**
Armstrong, C. (2008). Exploring a two-dimensional model of community pluralism and its effects on the level of transparency in community decision making. *Journalism and Mass Communication Quarterly*, 85(4), pp. 807-822.
- **Agencies with online portals respond better than those without**
Bizzo, E. and Michener, G. (2017). Forest governance without transparency? Evaluating state efforts to reduce deforestation in the Brazilian Amazon. *Environmental Policy and Governance*, 27, 560-574.
- **FOI laws can harm access, give officials reason to delay/deny**
Camaj, L. (2015). Governments' uses and misuses of freedom of information laws in emerging European Democracies: FOI laws' impact on news agenda-building in Albania, Kosovo, and Montenegro. *Journalism and Mass Communication Quarterly*, 93(4), 923-945.
- **Some recommend scrapping FOI laws and starting over**
Pozen, D. (2017). Freedom of information beyond the Freedom of Information Act. *University of Pennsylvania Law Review*, 165, 1097-1158.
- **Centralization of info release through PIOs hampers news**
Carlson, C., & Cuillier, D. (2017). Public information officers exert increasing controls. *Newspaper Research Journal*, 38(2), 198-214.
See, also, <https://www.spj.org/pios.asp#surveys>.
- **FOIA has so many problems many journalists don't even use it**
Bluemink, E. & Brush, M. (2005). A flawed tool: Environmental reporters' experience with the Freedom of Information Act. Society of Environmental Journalists report, available at http://www.sejarchive.org/foia/SEJ_FOIA_Report2005.pdf
- **Half of reporters have never requested records, 17% don't care**
Cuillier, D. (2011 May). Pressed for time: U.S. journalists' use of public records during economic crisis. Global Conference on Transparency Research, Newark, NJ.

- **Agencies more likely to deny minorities**
Darbishire, H. and Carson, T. (2006). Transparency and silence: a survey of access to information laws and practices in 14 countries. Open Society Justice Initiative. Available at <https://www.issuelab.org/resources/7736/7736.pdf>
- **Gov info crackdowns backfire, records pop up elsewhere**
Hobbs, W. and Roberts, M. (2018). How sudden censorship can increase access to information. *American Political Science Review*, 112(3), 621-636.
- **FOIA lawsuits more than double in past 10 years**
Mehta, C. (2018). FOIA lawsuits reach record highs in FY 2018. Transactional Records Access Clearinghouse, Nov. 12, 2019. <http://foiaproject.org/2018/11/12/annual-report-foia-lawsuits-reach-record-highs-in-fy-2018/>

Record album

A variety of studies compare how the states handle various exemptions and records. Use these to leverage better legislation or to fight against bad proposals.

- **Penalties vary widely in states, are weak and rarely enforced**
Stewart, D. (2010). Let the sunshine in, or else: An examination of the “teeth” of state and federal open meetings and open records laws. *Communication Law and Policy*, 15, 265-310. See, also: Marzen, C. (2017). Public record denials. *New York University Journal of Law and Liberty*, 11, 966-1027.
- **State copy fee provisions vary widely and arbitrarily used**
Lee, T. (2016). Public records fees hidden in the law: A study of conflicting judicial approaches to the determination of the scope of imposable public records fees. *Communication Law and Policy*, 21(2), pp. 251-279.
- **How states handle access to economic development records**
Edmondson, A. & Davis, C.N. (2011). Prisoners of private industry: Economic development and state sunshine laws. *Communication Law and Policy*, 16, 317-348.
- **Records sent on officials’ personal electronic devices, by state**
Senat, J. (2014). Whose business is it: Is public business conducted on officials’ personal electronic devices subject to state open records laws? *Communication Law and Policy*, 19, 293-326.

- **Email records, by state**
Youm, K.H. (2014). Access to email and the right of privacy in the workplace. In *Transparency 2.0: Digital Data and Privacy in a Wired World*, Davis C.N. & Cuillier, D. (eds). 97-114.
- **Privatization of records through trade secrets, by state**
Stewart, D. and Sanders, A.K. (2019). Countering the privatization of public records: How trade secrets, purported competitive harm and third-party interventions keep government business in the dark. Presented at the National Freedom of Information Coalition summit, April 12, 2019, Dallas, Texas.
- **Private universities' campus police records, by state**
Moore, J. (2019). Out from the curtains of secrecy: Private university police and state open records laws. Presented at the National Freedom of Information Coalition summit, April 12, 2019, Dallas, Texas.
- **SLAPP suits around the nation in a FOI context**
File, P.C. and Wigren, L. (2019). SLAPP-ing back: Are government lawsuits against records requesters strategic lawsuits against public participation? National Freedom of Information Coalition summit, April 12, 2019, Dallas, Texas.
- **Home addresses exempted in public record laws, by state**
Gil, J.M. (2019). Privacy vs. transparency: Tracing home address exemptions in state FOI laws. Presented at the National Freedom of Information Coalition summit, April 12, 2019, Dallas, Texas.
- **Access to legislative records around the nation, by state**
Mulvey, R. and Valvo, J. 'Opening the state house doors': Examining trends in public access to legislative records. Presented at the National Freedom of Information Coalition, April 12, 2019, Dallas, Texas.
- **Access to public university foundation records in the nation**
Capeloto, A. (2015). A case for placing public-university foundations under the existing oversight regime of freedom of information laws. *Communication Law and Policy*, 20, 311-342. Reinardy, S. and Davis, C.N. (2005). A real home field advantage: Access to public university foundation records. *Journal of Law and Education*, 34(3), 389-420.
- **How various states set up records ombudsman programs**
Stewart, D.R. (2009). Managing conflict over access: A typology of sunshine law dispute resolution systems. *Journal of Media Law and Ethics*, 1(1/2), 49-82. Also: Stewart, D.R. (2013). Evaluating public access ombuds programs: An analysis of the experiences of Virginia, Iowa and Arizona in creating and implementing ombuds offices to handle disputes arising under open government laws. *Journal of Dispute Resolution*, 2012(2). Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2440820

Public attitudes

Understand how the public views records and your/their right to access them.

- **Older, affluent, educated tend to support FOI more than others**
Cuillier, D., & Piotrowski, S. J. (2009). Internet information seeking and its relation to support for access to government records. *Government Information Quarterly*, 26(3), 441-449.
- **Liberal, skeptical and cynical more supportive of FOI**
Cuillier, D., & Pinkleton, B. (2011). Suspicion and secrecy: Political attitudes and their relationship to support for freedom of information. *Communication Law and Policy*, 16(3), 227-254.
- **Those engaged in civic affairs more supportive of FOI**
Cuillier, D. (2008). Access attitudes: A social learning approach to examining community engagement and support for press access to government records. *Journalism and Mass Communication Quarterly*, 85(3), 549-576.
- **Heavy users of Internet for info-seeking supportive of FOI**
Cuillier, D., & Piotrowski, S. J. (2009). Internet information seeking and its relation to support for access to government records. *Government Information Quarterly*, 26(3), 441-449.
- **Those fearful of privacy invasion less supportive of FOI**
Cuillier, D. (2004). Public support for press access declines as personal privacy concerns increase. *Newspaper Research Journal*, 25(4), 95-103.
- **During times of mortal strife, death thoughts cause polarization**
Cuillier, D., Duell, B., & Joireman, J. (2009). FOI friction: The thought of death, national security values, and polarization of attitudes toward freedom of information. *Open Government*, 5(1).
- **Support varies by type of record**
Cuillier, D. (2008). Access attitudes: A social learning approach to examining community engagement and support for press access to government records. *Journalism and Mass Communication Quarterly*, 85(3), 549-576.

Exercise your FOI muscles

David Cuillier

Below are activities and skills you can practice to hone your access muscles and integrate a “document state of mind” in your life and workplace. These are just some of the ideas included in “The Art of Access: Strategies for Acquiring Public Records,” by Cuillier and Charles Davis.

Make an “FOI First” sticky note

Create an “FOI First” sticky note and post it on your computer/laptop monitor. Then select a day and once a week, first thing, submit a public records request for that document. Request one new document each week at that designated time/day. For example, write “FOI First Friday” if you choose Friday.

Circle yourself

Grab a piece of paper and put your name in the middle. Then around your name write all the different roles and identities you represent (e.g., student, taxpayer, homeowner, driver, parent, pet owner). Then, around those roles, write all the public records that might contain information about those roles. Be amazed at the paper trail you will leave behind in this world. Now do the same thing for a prominent person in your community or someone you cover on a beat. Go examine those records to see if you find anything surprising or newsworthy.

Map an agency

Go online to the main web page of a local government agency, such as the city, university or school district. Then start burrowing through the site, and on a piece of paper or your computer start mapping out the agency based on what you find. Write down what requirements the agency must meet and what documents it generates. Come up with at least two document-based story ideas.

Google Advanced Search document hunt

Identify a government agency you are interested in and find its online domain name (e.g., www.michigan.gov for the state of Michigan). Then, in Google, go to the Advanced Search function (just Google “Google Advanced Search”) and search within that domain for different file types (.pdf,.doc,.xls., etc.). For example, a search of the michigan.gov domain for the word “the” yielded 2,190 Excel files, 9,070 Word files, and 197,000 pdf files. Browse them to see what records they have posted online. Or conduct the same search with more specific keywords. Find three records that could be the basis of stories.

Find an FOI friend

Find a like-minded journalist at a similar non-competing news organization who can be your document buddy. Contact that person with an e-mail or phone call. Arrange to have coffee and talk about records you have and plan to request. Try to get three tips or records ideas from the person. Share ideas and keep each other motivated.

FOI an FOI log

Pick a local government agency and request the requests for the past year or two. See if the log is kept in an electronic format, such as Excel, and try to get the disposition, including whether the records were provided, when they were provided and who asked for them. Then do a quick tally to see how many records were requested, what percent were provided, how long it took people to get the records and who tended to request the records (media, businesses, attorneys, etc.). Look for trends over time, or compare agencies to identify the most secretive and open local governments. Find three potential records that could lead to your own stories, and then request them.

Blank-form hunt

Search a local government website or your state's website, looking for all forms provided online; often state websites will have an actual link to forms from their home pages. You can also look for licensing renewal pages or search for the keyword "form." You will find hundreds of blank forms that people fill out. Print out two that interest you and use a highlighter to mark the parts that are most useful to your reporting. Then request the database that the form is based on.

Create a communal document pool

On your newsroom Intranet or university online course system, or perhaps through Google Drive, create a place where reporters can post documents they have received that might be of help to other beats. Post the document and location, or the actual document or data. Create a running index of great documents in the community.

Get Grandpa's FBI file

Impress your family (or get ostracized from the next reunion) by requesting Grandpa's FBI file, or your own. Anyone is allowed to request to see their own FBI file, if they have one. Also, you are allowed to request the files on anyone who is deceased. Check out the website "Get Grandpa's FBI File" at <http://www.getgrandpasfbifile.com/>. To request your own file, see the companion website, "Get My FBI File," at <http://www.getmyfbifile.com/>. You can do this in just minutes, and then take bets on when you get the get the files. MuckRock also has a great guide to getting your own FBI file at <https://www.muckrock.com/news/archives/2018/aug/09/fbi-flowchart/>

Zaba and Pipl yourself

Pick a person: yourself or a key source. Then run that person through www.pipl.com, www.zabasearch.com and Google. Look at the vast amount of information available online that these websites gleaned, including date of birth, home address, home phone number, pictures and relatives. Notice how Google isn't really that helpful—that it's more important to know where records are kept. Try to figure out where the information came from, and then go get it yourself. Identify which information is inaccurate. Create a "profile" of the person based on what you found. Later, if a public official denies information to you, such as the date of birth of city employees or home addresses, then show that official his or her own "pipl" results displaying that information. The bottom line: If someone wants to find you, they will. As unpleasant as it is, keeping dates of birth and home addresses secret is futile—that horse is already out of the barn.

Compare state laws

Identify strengths and weaknesses in your state public records laws by comparing your FOI law to other states. Find an area of your state public records law that interests you by scanning the Open Government Guide at the Reporters Committee for Freedom of the press (<https://www.rcfp.org/open-government-guide/>). For example, look at the category "How is e-mail treated?" or whether "gun permits" are secret. Then use the "Compare" function at the bottom of the page to get a list of how each state handles that particular issue. Get out a piece of paper and divide it into three categories: Open, Secret, Unclear. Write down where each state fits and then tally what percentage of states make that information public or secret. Once you've identified the weaknesses in the law compared to other states, contact your press association and state coalition for open government (<https://www.nfoic.org/organizations/map>) to see if something can be done about it.

Compare abroad

Compare U.S. FOIA to other nations' FOIA laws. Go to <http://www.rti-rating.org/> and find a country that is rated well. Then go to <http://www.freedominfo.org/> or Google to find the text of that country's law. Compare the law to U.S. FOIA (<https://www.rcfp.org/federal-open-government-guide>). What parts of the law should the U.S. consider adopting?

Record yourself

Record yourself asking for records. Or practice with a colleague or fellow student. Simulate a records request. Examine how you act. Note whether you use "I" statements or "You" statements. Go down the list of negotiation principles presented in this chapter and see if you are following them. Note how you can improve, write it on a piece of paper and practice.

Visit your local law library

The best way to become adept at legal research is to dive in, with a little help from the people trained to help: law librarians. Visit the closest law library to get a primer on the legal resources available. Even if you don't have a law school nearby, a general university library or public library will have some resources you can try out. Find three resources that will help you understand the law.

Build a request kit

When you are in a document state of mind, you will begin to request records on the fly—when a source at City Hall mentions a report, or a school board member refers to an audit during a board meeting. In those cases, you need to be ready to submit a public records request immediately. Put the following items in a folder to bring with you:

- Blank public records request forms. If an agency you cover has its own forms it prefers people to fill out, bring copies of those forms.
- Thumb drive or flash drive. So, a clerk can transfer electronic files for you.
- Portable handheld scanner. To capture images of documents at the agency rather than paying for copies. Or use your cell phone to take pictures.
- Copy of your state public records law. Go to <https://www.rcfp.org/open-government-guide/> and click on your state. On the left is a link to your state statute. Copy it to a Word file and reduce the font, then print it out.
- Summary of supportive case law. In that RCFP guide at <https://www.rcfp.org/open-government-guide/> you'll find explanations by an attorney about each element of the law and case law supporting openness. Create a one-page sheet of paper that lists key elements and the cases that support openness.

Do a double take

For your next document-driven story, identify a document that is held by two different agencies, such as a boating accident report (e.g., your state boating safety commission and the U.S. Coast Guard), and request the same document from both agencies. Note how the different agencies handle the requests and compare what information each agency redacts and makes public. This will enable you to piece together a more accurate picture for your story and better understand the inconsistencies of how different agencies, and perhaps different people within agencies, provide records.

Coffee with a custodian

Find an agency of interest, such as your university or a city, and find out who handles public record requests. Offer to buy the person a coffee and ask about their job. Don't inject your own thoughts or talk about yourself—just learn about what the person does, what problems they encounter and what they appreciate from requesters. Also ask what records are valuable that people fail to request. This will help later when you need records on the fly.

Find a quote machine

Identify an expert or two in your state who you can call to get a good quote for a story when you are denied public records. It could include your press association director, a media law professor or a state FOI coalition president. Get to know the expert and see if he or she will provide home contact information for after-hours interviews. To be fair, make sure to find experts in municipal government who can provide other perspectives. Possible sources include your state's association of cities or counties, a state records ombudsman or an assistant attorney general.

Find your dream house

Identify a house—either your own or one for sale in the community (see www.zillow.com). Then collect as much information solely through public records as you can about the house, property and surrounding neighborhood. Here is a list of potential records you can tap:

- Property tax records including assessed value, owner's name
- Police reports of nearby crimes and sex offender registries
- Development plans, including road plans, proposed development
- Parks plans
- Airport flight-pattern maps that show sound levels
- School test scores to compare schools
- Environmental Protection Agency records regarding hazardous chemicals and polluted sites
- Court records regarding the sellers
- Nuisance complaints reported to the city

Newsroom FOI coach tips and tools

David Cuillier

Models to choose from

https://drive.google.com/file/d/1aUJhL1dlkmnFrbxwT54Dd18HoqcBX_-E/view?usp=sharing

Handout describing six models for newsroom FOI evangelist/trainers and 15 contributions they can make to their organizations. Provided by David Cuillier (linked from FOI Files column in IRE Journal, Fourth Quarter 2022)

Sample request tracking spreadsheet

<https://docs.google.com/spreadsheets/d/1weqNZ4-SDGnt7cma57KazaxFwiTjFnZgFHS7PvZF4Ik/edit#gid=1948781277>

Sample Google sheet you can use in your newsroom to share and track records requests, provided by Lam Thuy Vo.

FOI Audit Toolkit

www.spj.org/foitoolkit.asp

Tips on how to coordinate an FOI audit in your community, state or region. Created for the Society of Professional Journalists by Charles Davis. See a list of previous audits here: <https://www.nfoic.org/foi-audits/>

Sunshine Week project

<https://sunshineweek.org/>

Rally colleagues within your newsroom (or state) through an annual FOI project timed with National Sunshine Week each mid-March (James Madison's birthday, March 16). Coordinated by the [Breachner FOI Project](#) at the University of Florida.

Sample FOIA training slides

<https://docs.google.com/presentation/d/1PURnAw4sqcdcbz43tpImalyrdMEFf4mbJfRNs0Vimo/edit#slide=id.p>

A training PowerPoint slide deck you can use (and modify) for trainings within your newsroom. Provided by Lam Thuy Vo.

Sample FOIA letter template wording

<https://docs.google.com/document/d/1NYL7s2aaoOtdYy21NyKIG42V2j3Iki88cuyDLmIvWQs/edit>

Some specific suggestions on wording for FOIA request letters to improve responsiveness. Provided by Lam Thuy Vo.

MuckRock training tips

<https://www.muckrock.com/project/foia-101-tips-and-tricks-to-make-you-a-transparency-master-234/>

Tons of tip sheets on strategies for getting public records, from basic to advanced.

Tips from a FOIA Terrorist

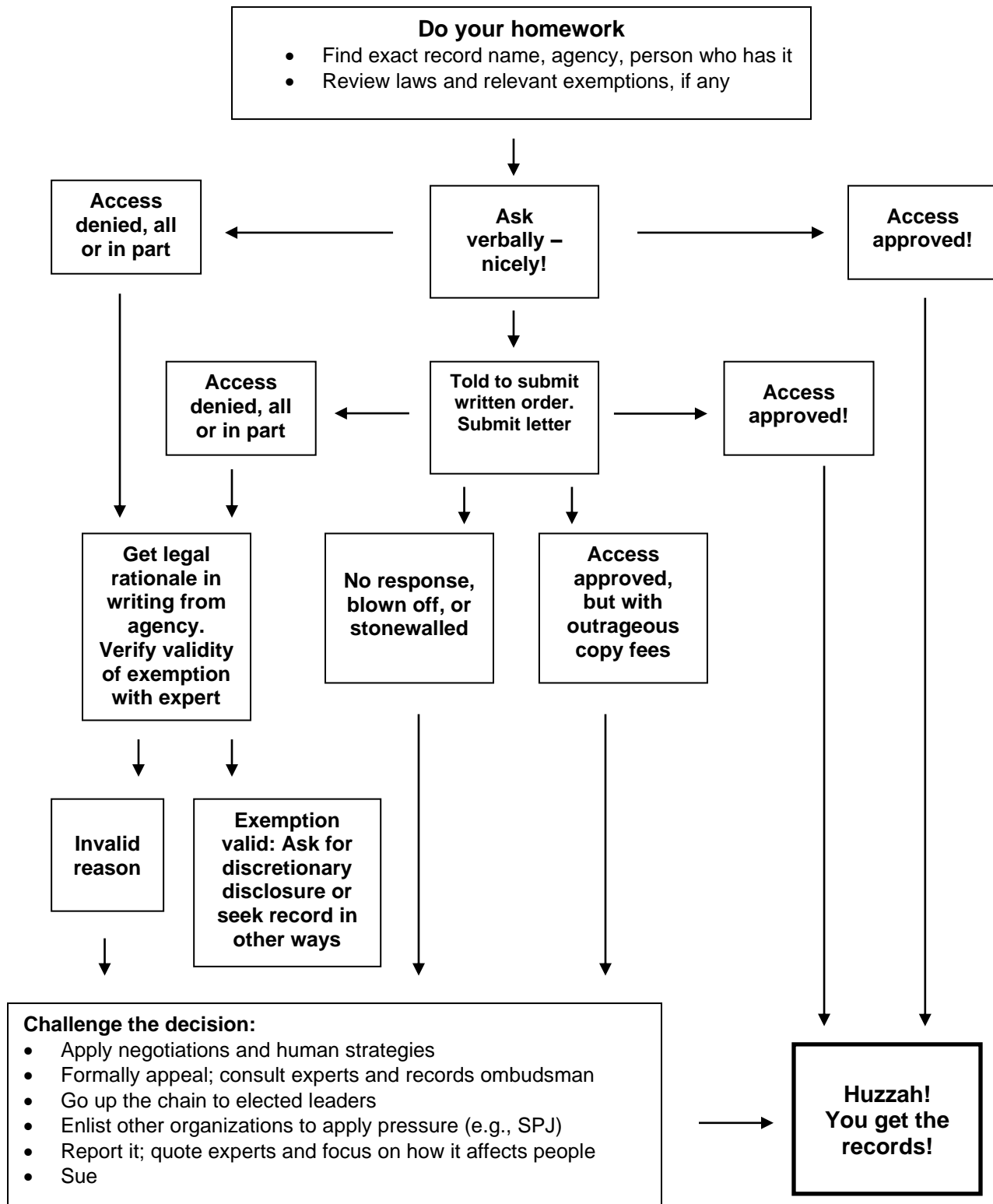
<https://www.ire.org/ire-radio-podcast-bonus-tips-from-a-foia-terrorist/>

Listen to Jason Leopold talk about FOIA Tricks at the 2016 CAR Conference in Denver. In addition to the recording, you can find examples of his work and other tips (for IRE members only). Additional tips provided by Leopold through John Tedesco's website:

<https://johntedesco.net/blog/2016/03/24/effective-foia-techniques-from-foia-terrorist-jason-leopold/>

As well, more tips from Leopold and MuckRock co-founder Michael Morisy, at Poynter: <https://www.poynter.org/reporting-editing/2020/mountains-of-vital-stories-about-the-coronavirus-are-hidden-in-public-records-heres-how-to-foia-for-them/>

Access flowchart



Doing FOI when you're SOL

- 1. Surprise yourself.** Look at public records as birthday presents. Because turnaround on orders can take days, weeks or months, (and sometimes years), submit orders for documents that could yield a good follow-up story or project. Then when you get a box in the mail three months later it will be like opening a present. Squeeze those record-based projects around the daily work.
- 2. Minimum story.** When you submit a public records order, always have a "minimum" story in mind – something you might be able to produce fast, or a launching pad for a project. No use fishing for stories with random records orders. That can waste time.
- 3. Keep order forms handy.** Carry order forms and a copy of your state open records law in your bag. Fill out orders on the spot if you are at a city council meeting or at the police station.
- 4. Tracking system.** Develop a good system for tracking orders. It can be as simple as a binder with a sheet of paper for each order. Some reporters use Excel. Every time something new happens with the order (response from agency, your response back, etc.), note the date, who you talked to, and what was said. Always agree to changes in your order in writing, such as through e-mail exchanges.
- 5. Team up.** Find someone else you can work with and team up. Sometimes splitting the work can make things happen. Use Google Documents or other similar programs to share your work and update notes.
- 6. Build credibility.** If you complete some record-based projects then your boss is more likely to cut you more time to take on bigger projects.
- 7. Get inspired.** During lunch, visit FOI websites (see Access Resources at end of handouts) to see the great work other journalists are doing with documents. See the challenges they face. Even though it seems like your viewers and sources might not seem to care about access, know that you aren't alone. There are others out there like you.

Planning your FOI order

Charles N. Davis and David Cuillier

Learn the law

Public records laws require government agencies to provide anyone the right to look at a record (or pay for a copy) that is held by a government agency subject to the law.

You can become fairly knowledgeable by reading a summary of the state public records law provided by the Reporters Committee for Freedom of the Press at: www.rcfp.org/ogg. See the resources listed at the end of these handouts for guides in your state.

Here are some basics of access law:

- No law requires an official to talk to you, but records laws require agencies to let you see documents or data.
- “Record” generally includes any format of recorded material, including paper, audio tapes, video, data, e-mail, and even the electronically embedded properties information in a Word file. Be creative.
- Federal executive agencies (e.g., FBI, but not the Supreme Court or Congress) are subject to the federal Freedom of Information Act. State executive agencies, cities, school districts and other local public agencies are subject state public records law. Be sure to know the name of your state law, and don’t ask for a record from your local school district based on federal FOIA.
- Other laws may apply, such as the Family and Educational Rights and Privacy Act for protecting educational records or the Health Insurance Portability and Accountability Act for medical records.
- Some records may be kept secret if there is a law that says the record may be kept secret, usually to protect national security, privacy invasion, etc.
- Some laws and agencies require a written order.
- Agencies are required by law to respond within a certain amount of time. They may provide the records, deny them in whole or in part (legal reason in writing), or say they need more time.
- Most laws are discretionary, which means an agency can give out the information even if an exemption allows them to keep it secret.

- Denials may be appealed to the agency. A person can also sue, in some states recouping his or her legal fees by substantially prevailing in court.
- When in doubt, ask for the record. It is up to the agency to prove it is secret, not for you to prove it is public.

Know the record

Identify exactly what you want to the best of your ability. Here are some tips for finding the existence of records:

- Check the agency's website and see if the record is provided online. Or perhaps information is provided online about the specific record.
- Visit or call the agency and talk to a clerk or person who would know what records are kept that would have the information you need.
- Look for original blank forms that the agency keeps to know what kinds of information is kept and how it is kept.
- Look at an agency's retention schedules or records indexes to find what kinds of records are kept.
- Ask to see the log of public records orders to see what other people have ordered.

Order the record

- **Avoid fishing.** Try to limit your order to what you really want. If you simply ask for "all files relating to" a particular subject, you may give the agency an excuse to delay its response, and you risk needlessly running up search and copying costs. Do your homework. Go talk to the agency first.
- **Get specific.** Cite relevant newspaper clips, articles, congressional reports, etc. If the records have already been released, let the agency know the date, release number, and name of the original orderer. If you are asking for a database, talk with the techies ahead of time to know exactly what data you are ordering and in what format. Tour the agency office and ask about what they are working on and specific documents they maintain.
- **Ask verbally.** Ask for the record verbally in person first, if possible.
- **Be polite but persistent.** The people on the other side of the counter don't come to work with horns and cloven hooves. They are people too, and they are more likely to get you what you want faster if you are nice about it, especially at the beginning.
- **Prioritize.** Let the agency know if you'd like to receive information in a particular order. Materials could be reviewed

and released to you in chronological or geographical order - or you may simply not want to wait for all the records to be reviewed before any are released.

- **Submit a written order.** If you anticipate balking, bluffing, or being passed around or put off, simply submit a public records order letter, which starts the clock ticking and requires them to act and stop passing you around or delaying. On the following pages see a sample state public records order letter generated from online order letter generators.
- **Choose your tone.** Note the last paragraph of the order letter that threatens litigation. Threaten to sue only if you are prepared to do so and if they've indicated they will not cooperate. Also, consider whether the wording may create defensiveness or hostile undermining of your order (e.g., delays). Sometimes it's better to attract flies with honey than vinegar. But at other times, coming in strongly and quoting the law can demonstrate you are serious and know what you are talking about (research indicates the threatening letter gets more agencies to respond).
- **Decide on your own transparency.** Legally, you don't have to say who you are or why you want the documents. As a practical matter, you'll probably have to tell them your name and provide a phone number so they can contact you. Also, some states have different standards for commercial users, so you might have to sign a statement saying you aren't a commercial user (they don't consider journalists as commercial users). If you don't care if the agency knows why you want the information, feel free to tell them. It's likely to speed the process and they might offer other information that you didn't order. But if that would jeopardize your investigation, then don't tell them. If they ask, "Why do you want that information? Are you going to air something negative?" Just tell them, "I don't know what I'm going to produce until I gather all the facts," which is true.
- **Go to the top.** Sometimes going straight to the agency's lawyers or top officials speeds things up. Clerks sometimes deny orders or stall as they try to make sure they don't release something that will get them in trouble. Once the agency attorneys look at it and see it should be released, it often is.
- **Keep records of records.** Keep track of every step of your different orders. Keep dates, contact names, phone numbers and try to correspond by email so you can have written records of what was said to whom. Some orders can last years, so keeping track of details can help.

- **Follow through.** After you submit an order, always follow it through to the end, especially if they provide the records, even if months after you need it. Also, if denied initially don't skulk away cowed. If you have a legal right to the information keep at it. How you treat denials will affect how agencies treat requests in the future. Educate officials and get them in the habit of providing information to you and the public. It's part of their job.

Sample order letter: Friendly version

April 5, 2025
Mayor David A. Condon
City of Spokane
Spokane, WA 99201

RE: Public records order

Dear Mayor Condon,

I know you are busy, but I want to thank you in advance for helping me gather some public records regarding email correspondence. I am writing to order a copy of all work-related emails sent or received by you during the past three months, either on work-provided accounts or other accounts (e.g., Yahoo, gmail) where you might conduct city business.

I would be happy to pay copying and postage fees and help in any way I can, but if the cost is more than \$5, please contact me and let me know. If the files are available electronically and would be more convenient to copy and email, then that would great too.

I would very much appreciate a response by the end of the month, and if there is information that I am not entitled to, please let me know. I understand that sometimes some information doesn't warrant disclosure for statutory reasons, and might need to be blotted out while releasing the public part.

If there is anything I can do to help with the order, please do not hesitate to let me know (email is the fastest way to reach me).

Thanks again for your help!

Sincerely,

David Cuillier
1212 Main St.
Spokane, WA 99201
517-555-1111
cuillier@email.com

Sample order letter: Neutral version

April 5, 2025
Mayor David A. Condon
City of Spokane
Spokane, WA 99201

RE: Public records order

Dear Mayor Condon,

Pursuant to the state open records act, I order access to and copies of all work-related emails sent or received by you during the past three months, either on work-provided accounts or other accounts (e.g., Yahoo, gmail) where you might conduct city business.

I agree to pay reasonable duplication fees for the processing of this order.

If my order is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act.

Thank you for your assistance.

Sincerely,

David Cuillier
1212 Main St.
Spokane, WA 99201
517-555-1111
cuillier@email.com

Sample order letter: Legalistic threatening version

This letter is based on the Student Press Law Center letter available at <https://splc.org/lettergenerator/>. You might remove the threatening paragraph toward the end.

April 5, 2025
Mayor David A. Condon
City of Spokane
Spokane, WA 99201

RE: Public records order

Mayor Condon,

Pursuant to the state open records law Wash. Rev. Code Secs. 42.56.001 to 42.56.904, I write to order access to and a copy of all your emails for the past month regarding public business from all email accounts, public or private carriers. If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address.

I agree to pay any reasonable copying and postage fees of not more than \$5. If the cost would be greater than this amount, please notify me. Please provide a receipt indicating the charges for each document.

As provided by the open records law, I will expect your response within five (5) business days. See Wash. Rev. Code Sec. 42.56.520.

If you choose to deny this order, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material.

I would note that violation of the open records law can result in a fine — payable to me — of up to \$100 for each day that I am denied access. Litigation costs, including reasonable attorney fees, may also be awarded. See Wash. Rev. Code Sec. 42.56.550(4).

Thank you for your assistance.

Sincerely,

David Cuillier
1212 Main St.
Spokane, WA 99201
517-555-1111
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Overcoming denials

Charles N. Davis and David Cuillier

IF THE AGENCY SAYS...

"YOUR DESCRIPTION OF THE RECORD IS INADEQUATE"

This means you probably did not give enough specific identifying information. Give the agency the benefit of the doubt and rewrite your order. You can try to call or make an appointment with the official processing your order to get more help.

"THE RECORD DOES NOT EXIST"

If you are reasonably certain the records you've ordered do exist, and if your order letter was clear and informative, you should try to do more research. Are there news reports, congressional hearings or court records that describe the information you want more clearly?

Rewrite your order, giving the agency more guidelines and clues for where they might find it. Try to be as patient and understanding as you can; some agencies are short staffed or have disorganized data systems.

"SOME OF THE INFORMATION IS EXEMPT FROM DISCLOSURE, SO WE WON'T GIVE YOU ANY OF IT"

The agency can't withhold an entire document or file because some portion(s) of it is exempt from disclosure. The agency must release any non-exempt material that can be reasonably extracted from the exempt portion(s).

"WE CAN'T GIVE IT TO YOU BECAUSE AN EXEMPTION SAYS WE HAVE TO KEEP IT SECRET"

FOIA exemptions are generally discretionary, not mandatory – an agency is not required to withhold all information. Agency officials can choose to waive the exemptions and release the material, unless another statute specifically restricts that disclosure. One exception is FERPA, but note that FERPA doesn't cover everything and they can release the records if identifying information of a student is blotted out.

"OUR PROPRIETARY SOFTWARE DOESN'T ALLOW US TO COPY DATA"

I don't know of any software that can't copy or export data. Maybe it exists, but it must be rare. Usually, the person saying that is unfamiliar with the software and needs to confer with the agency computer technicians. If, after talking to their techies, they still stick to that story, find out the software maker and call them up. No doubt the company will want everyone to know how useful and versatile the software is and explain how to copy the data.

"COPYING THE DATA WITH FIELDS REDACTED WOULD CREATE A NEW RECORD, AND WE ARE NOT REQUIRED BY LAW TO DO THAT"

It is true that most laws do not require government agencies to create new records, only let you see or copy existing records. But you aren't asking for a new record – just a copy of their existing records with some information redacted. It's no different from getting a copy of a paper file with some information (fields) redacted with a black pen. Just because they blot out a name on a piece of paper doesn't mean it's a new record. Same theory applies to data. Copying data with some fields redacted, or even combining fields from different databases, is not creating a new record. It's copying existing data.

"OK, OK. HERE IS YOUR PILE OF RECORDS. THAT WILL BE \$1 MILLION, PLEASE."

Make them justify the expenses with a line-by-line explanation. You might be able to narrow your order to get fewer documents that would still serve your purposes. Arm yourself with what other agencies charge for copies, including for computer programming time. If many other agencies charge nothing or very little, then make that known, including by writing a story about it.

Look at the agency's FOI logs to find out if others have been receiving the same records. Ask for an extra copy. Ask for a backup copy of their data if they make backups. Get an outside expert to scrutinize their time estimates. The estimates are usually inflated and unreasonable. See the handout on Lowering Copy Fees for more tips on reducing copy costs.

"WE ONLY PROVIDE THIS INFORMATION TO RESEARCHERS. YOU CAN HAVE IT IF YOU SIGN THIS CONTRACT WITH US."

Some agencies give information to researchers provided they sign a contract with use restrictions, such as prohibiting identification of individuals in the records. Few reporters are willing to sign such agreements. The problem is you might want to use the information for something else later and won't be able to. Also, fundamentally it designates journalists as above average citizens with special access, and it creates a new category of "public information." Either it's public or not. Some journalists advise only considering such agreements when the information is clearly not public but the agency is willing to release it for your story.

"WE DON'T KNOW WHY YOU WANT IT OR HOW YOU MIGHT USE IT. YOU MIGHT USE IT IN A WAY WE DON'T LIKE."

Tough noogies. In most states a records order cannot be denied based on who the orderer is or how the information will be used (except in the case of commercial mailing lists in some states). If they ask why you want the information you can tell them: "I wouldn't want to determine the story before I have all my facts. I'm just doing my job at gathering information." If you order records routinely from an agency (weekly), then it will be no big deal and they are less likely to question you.

"WE JUST DON'T WANT TO GIVE IT TO YOU"

The agency must explain its reasons, usually in writing, for determining that an exemption applies to any particular information.

- You have the right to contest any exemption claim.
- The exemptions must be narrowly applied, since the FOIA was created to maximize public access to agency records
- You can file an administrative appeal to a higher agency official. And if this fails, you can file a lawsuit. The federal court must conduct a full judicial review of the agency's claims and it is up to the agency to justify its denial of your order.
- Even if the agency releases substantial portions of the material you've ordered, you can appeal the decision to "sanitize" the rest. You can also order a detailed justification for each deletion.

- You can ask the state public records ombudsman to step in and try to mediate. The ombudsman has the authority to look at records behind closed doors to see if the agency is following the law (although the ombudsman has no enforcement authority).
- While you are haggling with the agency, try to get the information from another agency. Some records are kept by multiple agencies (for example, boating accident data kept by state agencies and the Coast Guard).
- Use principled negotiation and hard tactics, as detailed on the following pages.

Eliminate copy fees

David Cuillier

Here are some tips for lowering or eliminating unreasonable fees:

- 1.** Don't ask for copies. Look at the documents for free if you can.
- 2.** Narrow the order to just the few pages that you really need.
- 3.** Ask for a fee waiver using the information for the public good (federal FOIA also provides waivers for journalists).
- 4.** Take photos, use a portable scanner, or even a photocopy machine.
- 5.** Ask for files on thumb drive, posted online, or e-mailed for free.
- 6.** Ask the agency for an itemized list of expenses to justify the costs. Here is what I consider reasonable: Add paper (.7 cents per page based on a box of paper from Office Depot), machine depreciation (.2 cents per page based on a Xerox WorkCentre 5225 that costs \$4,299 and produces 75,000 copies a month), and toner (.6 cents per page), and you get 1.5 cents per page. Call it an even 2 cents per page.
- 7.** Question high staff search fees – \$100 per hour is equivalent to paying someone \$208,000 a year to make copies.
- 8.** Order a copy of the contract the agency has with a copy company. My employer pays a company less than a penny (.9 cents) per page to provide the machine, service it and refill the toner.
- 9.** Survey local agencies to compare costs and expose the unreasonable.
- 10.** Survey citizens to find out what they consider reasonable. Most people will say 10 or 15 cents per page copy.
- 11.** If the unreasonable charge is for computer programming, call the company that makes the software and ask them if copying data should be time consuming. They often say it takes a few minutes.
- 12.** Publicize the unreasonable copy fees. Find out if an agency provides free copies to lawyers or commercial orderers but overcharges citizens. Contact elected officials. Cover it.
- 13.** Team with other orderers to share the bill. Order the order logs to see who else gets records frequently from the agency.
- 14.** Ask an ombudsman or attorney general to talk to the agency.
- 15.** Sue or lobby for laws specifying reasonable fees.

Psychology of FOI: Social Exchange Theory

David Cuillier

Social Exchange Theory (Peter M. Blau, 1964), is often applied in survey research for mail and phone surveys, as well as other purposes in understanding how people decide in their minds whether to engage with another person. People will respond to you positively if they are motivated to do so by three factors they consider without even thinking about it:

1. Increase rewards

- Show respect in a positive way
- Say “thank you”
- Provide tangible rewards (information might be useful for their own work, or to help inter-agency data transfer)
- Say others are doing it (peer pressure; social validation)

2. Decrease costs

- Avoid subordinating language. Don’t say they need to talk to you or answer questions. Be subordinate (“Can I ask you a favor?”)
- Avoid embarrassing them
- Make it appear short and easy (set up record release schedule)
- Make it easier to say “yes” than “no”

3. Build trust

- Get to know the record custodians.
- Backed by authority (“your boss said I could talk to you”)

Soft tactics and principled negotiation

David Cuillier

Below are tips for getting sources to comply with orders, based on the theories and application of "principled negotiation." These techniques are advocated by such experts as William Ury, co-founder of the Harvard's Program on Negotiation and author of "Getting to Yes." I suggest reporters always approach their sources in this frame of mind. With enough practice you'll get a lot of agencies to comply without threats of litigation.

Argue interests, not positions

Argue for your interest (I wish to analyze ambulance response times to find trouble spots), not positions (I want your database). If the agency understands why you want the information they are more likely to be cooperative. Of course, you are not obligated by law to explain that and you might not want to tip them off. But in reality they can figure it out most of the time so being up front is a good option. Then, they can argue their interest (we don't want to invade anyone's privacy). You can work out a solution when you understand interests. Positions cause both sides to dig in.

Allow face saving

If you box an official into a corner early on they might feel like they have to stick to their guns no matter the cost, especially if they denied the information in front of their superiors and subordinates. Talking with the person informally first, before they commit to an action, gives the person more leeway to agree to your order. Or, suggest the legal department examine the issue and let them make the decision – that will relieve the official of the shame of changing his or her mind (e.g., "sorry folks, I had to say yes because the attorneys said I had to release it.")

Use people skills

Allow officials to vent. Listen first, then repeat what you heard (whether you agree with it or not). Use "I" statements, not "You" statements. Talk to people informally side-by-side, not facing across a counter, creating psychological "opposition."

Apply negotiation jujitsu

Bend like the willow, don't break like the oak. Invite criticism and advice for how to analyze the information. If they say the record is a waste of time then ask what record would be a better use of time. Use questions instead of statements. Use silence after an unreasonable attack. Invent different options and alternatives, and end conversations with a compliment.

Hard tactics

David Cuillier

Sometimes you apply the techniques of principled negotiation but an agency just doesn't want to play ball, or purposely chooses not to play fair. Then it's open season and time to apply hard tactics. Below are tips for getting sources to comply with orders, based on the six elements of persuasion by Robert Cialdini of Arizona State University. Also, other strategies are provided for pressuring an agency to release records. Do not use these techniques for evil. Only good.

1. Reciprocation

- **Rejection-then-retreat:** Ask for a lot, then cut it in half. "Can I see all your expenses in database format for the past 20 years? OK, how about starting with just the expense reports for the past five years?" The clerk will appreciate you for simplifying the order and may reciprocate by working faster and being more helpful. Order information that you can give up later, such as social security numbers. If it lands in court a judge might want you to concede something anyway. When it appears you are giving them something then they are more likely to reciprocate.
- **Get-to-know-you stories:** Don't ignore newsworthy positive stories. Occasionally government actually does something right. It's often useful to do a harmless newsworthy project first to get to know people and build trust (e.g., analyze pet license data for a feature on most popular dog breeds/names), then work from there. When you do something positive to someone, psychologically they feel obligated to reciprocate and help you out even more. But don't make up stories or get buddy-buddy. The public comes first.
- **Be a helper:** Check in frequently after the order is filed and offer to help to make their jobs easier. Offer to help copy data or provide CDs for copying. They might not take you up on it but they might appreciate the gesture.

2. Commitment and Consistency

- **Everyone happy:** Ask, "How are you doing today?" When the person says fine, then he or she is more likely to help you. People don't want to appear stingy when they are fine and you are not.
- **Commitment:** Once commitment is made, people try to stick to it. Get commitment verbally: "Do we have an agreement?"

- **Ratcheting (low-balling):** Get a commitment for something small, then it opens the door for getting a “yes” on something bigger. This is the opposite of the reciprocation techniques. “How about if I could see a copy of what a police report looks like. OK, do you have what a case file would look like? What does it look like in your computer system? Any chance I could just get an electronic copy of your reports in Excel for the past year?”

3. Social Proof

- **Peer pressure:** We follow what we see everyone else doing (e.g., canned laughter). Request a record first from neighboring transparent agencies, then approach the recalcitrant agency. “Boy, all the other towns in the county provide this information. I wonder why it isn’t open here? Even Shelbyville provided it. Why not Springfield?” (Several experiments show this increases disclosure.)
- **Patriotism:** Focus on the importance of what they have to offer to the community. That it’s their duty as Americans to keep government open and transparent, and the community will appreciate it.

4. Liking

- **Looks:** As much as we hate to admit, people often make decisions based on how a requester looks. Dressing well helps; looking shady usually raises suspicions and increases denials.
- **Similarity:** Dress like your sources. Act like your sources. Talk about similar interests.
- **Compliments** that are sincere help.
- **Association:** Disassociate yourself with negative media and people who use information irresponsibly (spammers, identity thieves). Go to lunch with people for a positive association with you and food.

5. Authority

- **Bigger gets better responses.** Journalists from bigger media have more “authority” and tend to get calls returned faster. If you work for a smaller organization, consider teaming up with reporters from other organizations. Cooperative orders can increase pressure for release and serve everyone’s interests.
- **Titles have authority.** Have the order letter co-signed by the news director or, depending on the importance of the information, the owner. Or have the organization’s attorney send it.
- **Government allies.** Get people in government on your side to back you up. Get to know the state attorney general, your state

records ombudsman, or others who might be respected in government.

- **Shallow but effective.** Symbols of authority are effective: titles, clothing, automobiles. Even height conveys authority.
- **Cite the law.** The law is authoritative, particularly if it has penalties for noncompliance. Include the citations in your orders and e-mails when you want to exert authority.

6. Scarcity

- **For a limited time only.** What you are offering is limited. "I don't have time to wait until next week for you to check with the attorneys on this. My deadline is in six hours. Either I get the information or I'm going to have to produce a story for tomorrow morning's paper explaining that your agency is withholding it. I would hate for you all to look like you are hiding something and are bad officials when I know you aren't. The public will appreciate it."

7. Pound lawbreakers into submission

Sometimes you run across a few bad apples in public service (just like there are some bad apples in journalism) who deliberately act in bad faith and deny valid public records orders to hide corruption or embarrassing facts. Remind them who's boss (the public):

- **Go to the top.** Go to the elected officials and ask them why the agency is hiding information. Sometimes elected officials, especially during an election year, would rather avoid a public battle with journalists.
- **Cover it.** Some journalists say it's inside baseball but that's hooey. When an agency says "no" to you, they aren't saying "no" to you. They are saying "no" to the thousands or millions of people in your community. Tell those people. Quote access experts and show why the agency is breaking the law. You would produce a story if the agency broke other laws, right?
- **Wave the flag.** Use patriotism as leverage. Communists and Nazis favor secrecy, not god-fearing Americans. Are your officials pinkos who hate America, or are they good citizens?
- **Expose the deviant.** Get the same information from other agencies then ask the secretive officials why they are deviant. Nobody wants to be an outlier.
- **Rally allies.** Find people and groups who want the information and go tell them about the secrecy. It's even better if they are influential business owners, contributors or active citizens. When

officials see it isn't a media issue, and they fear the wrath of constituents, they yield.

- **Heads on pikes.** Put together a list of all the other agencies in your state or elsewhere that lost public records battles and had to pay tens of thousands of dollars in lawyer fees (including the orderers' fees). Show them the news articles that made the agencies look bad. When officials see the very real drawbacks of secrecy (heads on pikes), they might wave the white flag.
- **Bury them.** If they deny your valid order and are being stubborn, flood them with more orders. If they are trying to hide one record, you can tell them that you wonder what else they are trying to hide. Make it much more work to deny you records than to comply. Wear them down.
- **Order the emails.** Put in a record order for all emails, memos and other documents regarding you. See what they've been saying behind your back!
- **Release the hounds (lawyers).** Have your attorney write a terse letter citing the relevant law. The letter, while perhaps unbudgeted, can demonstrate you are serious and will pay off down the road with more records. If you don't have a lawyer, reach out to the Reporters Committee for Freedom of the Press, a law school clinic, or other experts in your state.
- **Sue.** Sometimes all it takes is filing a lawsuit and an agency will cough up the information. In many situations you can recoup your attorney fees, even if you don't go to court. Check out the new NFOIC litigation fund (<http://www.nfoic.org/>) that will cover litigation to fight for records. See the "Suing Pro Se" section below.

Top-10 open meetings red flags

Joel Campbell

1. **Retreats.** Just because a public body wants to meet at the beach for a retreat doesn't mean the open meetings law doesn't apply.
2. **Attorney-client privilege.** Some public bodies try to skirt the open meetings act by claiming attorney-client privilege, calling the attorney into executive session when they want secrecy. Question such ploys.
3. **Stealth agendas.** If the agenda says minutes, old business, new business, begin challenging the public body for more information. If the agenda says the public body is closing the meeting to discuss "personnel" ask for specific details about the meeting closure.
4. **Boilerplate closures.** In some states, city councils include an "executive session" on their agenda as a matter or practice whether they really need it or not. This encourages closed meetings and violates the spirit of open meeting laws.
5. **Electronic meetings.** Some states allow meetings to be conducted over the telephone or via video or audio conference. However, such meetings usually require that journalists and the public can listen or watch. Also watch for agencies conducting public business via e-mail.
6. **No votes for executive sessions.** Laws sometimes require that a majority vote be taken to go into closed session. Keep public officials honest and demand votes be taken.
7. **Work meetings or committee of the whole.** In some places, public bodies hold regular "work sessions," "committee of the whole meetings" or "work meetings" before their regular meetings. These often are designed to discuss matters informally and line up votes.
8. **Vague times and locations.** Some boards have attempted to approve closed meetings for a non-specific time and location in the future. In some cases these have been used to bring in candidates for job interviews. Object to such tactics.
9. **Get the meeting documents.** Ask for the same information packets the members of the board or council receive. These are public documents and can help you be more thorough in your reporting.
10. **Diffuse the open meetings bomb.** If a discussion scheduled for a closed meeting looks like it might violate the law, make a phone call before the meeting and try to persuade public officials to discuss the agenda item in question in the open. Some states have FOI hotline attorneys who may be consulted.

Data-driven news pegs

David Cuillier

- 1. Extreme.** Find the biggest, smallest, highest, lowest, richest, poorest.
Example: Janitor makes more than the mayor through overtime.
- 2. The Letterman list.** Instead of pinpointing the top or bottom, a ranked list is provided for viewers online. This helps people find their state, city, resident hall, football team, etc., on the list and see the relation to similar units.
Example: Money magazine's "100 Best Places in America to Live" list.
- 3. Year-to-year.** Look for change in a unit from one year to the next.
Example: Auto thefts drop 12 percent in 2024 as compared to 2023.
- 4. Long-term trends.** Look at the big picture by examining units over a long period of time, such as five, 10, 20 or 100 years. The numbers work well in a line chart.
Example: Burglary rate has risen 36 percent over the past 20 years.
- 5. Individuality.** Look for well-known people who might be of interest.
Example: Check databases of tax evaders, heavy water users or deadbeat dads with the name of leaders to see if there is a match.
- 6. Linking.** Link two different databases to see what matches come up.
Example: Link DUI records with transit drivers.
- 7. Counting.** Add up numbers in a database to get interesting figures.
Example: Check the county dog-bite database to find out how many people were bitten this year.
- 8. Grouping totals.** Add up totals for different groups and rank them.
Example: Add up the political contributions given to the mayor by the type of contributor and then rank them. Maybe developers gave the most money.
- 9. Averages.** Find the average or mean of a set of numbers.
Example: The average income of high school football coaches compared to other teachers.
- 10. Comparison.** Take local numbers and compare to state or national.
Example: Average GPA for athletes compared to universities nationwide.

Data ethics checklist

David Cuillier

Here is a checklist to review when dealing with data (also, see the SPJ Code of Ethics, <http://www.spj.org/ethicscode.asp>):

1. Is the database accurate?

Often an agency will provide data that have been compiled in a hurry, changed from year to year, or just garbled. Take an excerpt of the data and verify it is accurate. Clean it up. Some people say it's OK to take post government databases online raw, and if there are inaccuracies it is the government's fault. That is true, legally, but journalists have an ethical duty to verify and publish the truth.

2. Did I analyze the numbers right?

When you get your findings, run them past the agency to see whether they find errors. You want to give them the chance to reply, and they can't prevent you from publishing it. Don't provide the entire story to an agency before publication, but it doesn't hurt to present key findings.

3. Should I withhold some of the data from the public?

Just because we have a legal right to acquire public data doesn't mean we have to publish everything. We might get databases that include home addresses. In some situations that might be important to publish online (sex offender data). In other situations the harm in publication might outweigh the benefits (database of child beauty pageant winners).

4. What would my mom/aunt/grandma/neighbor/child think?

Apply the sniff test to determine whether publication of the data might evoke a public backlash that could lead to closure of the records. This has happened many times around the country, particularly when data include home addresses (concealed weapons permits) or other sensitive information (911 recordings). People worry about privacy invasion and will call for blanket closure of records. That doesn't mean we don't publish data if they have any whiff of personal privacy. But if we do, we must have a clear and defensible reason that we explain up front.

5. Am I pursuing data aggressively in the public's interest?

A lot of journalists don't report about denials because they say it's inside baseball, or a conflict of interest. However, it is the ethical responsibility of journalists to fight for records on behalf of the public. Agencies aren't saying "no" to you – they are saying no to the thousands or millions of fellow citizens. When government breaks the law (including the state public records law), tell people.

Suing pro se

David Cuillier

You can do it!

Time and time again we have seen journalists and citizens denied public record requests and left with no recourse other than to sue. Yet, how many journalists – or journalism organizations – have the resources or gumption to file a lawsuit? Unfortunately, very few, and research shows fewer news organizations are willing to sue. The intimidation factor itself is the largest barrier, and a lot of government agencies know that, following the unwritten policy of only releasing sensitive records when a suit is actually filed. You can stand up to that. Sometimes simply filing a lawsuit will dislodge the records, and at minimum it makes for a good news peg to expose unnecessary government secrecy. This handout will walk you through the pro se (pronounced “pro say”) process of suing on your own, and where you can get the resources to cover your costs. You can do it!

Using this guide

This is not to be considered legal advice, rather a starting point to educate you about the process of suing for public records. If you need legal advice, reach out to the resources listed at the end of this document. A lot of this information is focused on federal FOIA, but the same principles apply for suing a city or state agency under state public records laws. While the process might seem daunting at first, it’s not rocket science. Here are overall thoughts for starting out:

- Realize this will be a long battle, but **DON’T GIVE UP!** A typical FOIA case can last a year, or longer, especially if the government intends to litigate, but don’t let this scare you. It might not serve your initial daily story, but it will help you get records in the future, and send a message to agencies throughout your community that they can’t get away with gaming the system when you request records.
- Don’t take things personally. What the attorneys write in their motions is part of their job. Don’t take their attacks personally and you will do a better job at defeating them.
- Realize you won’t win every time. Realize that there are indeed some legal exemptions which might actually apply to the records sought. Focus on your strong elements. Be willing to seek help, or even cut bait if you have to. Don’t set bad precedent. Live to fight another day!

Before suing

Make sure you crossed your t's and dotted your i's when it comes to the initial public records request. It is better to fix any procedural errors that you made prior to suing than worrying about having the government move to dismiss the lawsuit after you filed.

Learn the law

- Read resources that explain the public records law. For federal FOIA, the Reporters Committee for Freedom of the Press has a great guide at <https://www.rcfp.org/wp-content/uploads/imported/FOGG.pdf>, including sample FOIA request letters and appeal letters. Even better, check out https://foia.wiki/wiki/Main_Page. Reporters Committee's Open Government Guide provides a good explanation of each state public records law, as well.
- Read the full text of the law and relevant court opinions.
- Consult experts, such as your state press association or open government coalition if it's a state/local issue, or the Reporters Committee if it's a federal issue. Look for recent cases regarding your specific record. See the list of resources at the end of this handout.
- If your case is a little fuzzy – no strong case law or precedent established to support you, then you might consider going with a professional attorney. The only thing worse than losing a records lawsuit is setting bad precedent for everyone else. If the law is on your side and recent rulings have strongly supported your position, then proceed.

Know the agency rules

- Each federal agency has regulations governing how to submit FOIA requests, and state and local agencies usually have their own processes. Follow the instructions. If you didn't do so initially, go ahead and submit a new request, under compliance with the regulations. Then, wait the necessary time period prior to continuing.
- Your request should have also clearly stated it was a FOIA request (if federal) or public records request (if state/local) and not consisted merely of questions –agencies are not required to answer questions, they provide documents instead.

Take good notes

- Record everything you can during the request process, including when you talk to people and what was said. Have it in writing (e.g., email), if possible.
- Create a timeline so you are clear on how things progressed with your request. Note when the agency has missed its deadlines. Federal FOIA provides agencies with 20 working days to comply with a FOIA request. There are exceptions to the rule, in cases where “unusual circumstances” are invoked. In those circumstances, the deadline is typically extended to 30 working days. The timer starts when the agency acknowledges the request, unless the agency takes longer than 10 working days to acknowledge the request. However, if you sent the request directly to the office responsible for the request (very unlikely), the timer starts right away. Each state public records law has its own timetable.

Clarify and ask for fee waiver

- At the federal level, agencies are allowed to 1) assess fees for FOIA requests and 2) request clarification for FOIA requests. You must prove that there is justification for a fee waiver (waivers are provided for the news media), or pay the fees. If you pay the fees, the agency is still required to comply with the request within the deadlines, unless you agreed to an extension or unusual circumstances are invoked.
- Agencies are also allowed to request clarification or narrow a FOIA request. You should promptly provide the requested clarification. In either of these cases, the agency “pauses” the clock until it receives the clarification regarding the request or fees.

Inquire about a completion date

- Attempt to work with the agency to get an estimated status date by which it expects it will complete the request. Federal FOIA requires agencies to provide an estimated completion date upon request. Email a few times, a few days apart, requesting the completion date. This is also a good step to show the court the agency is engaging in bad faith, and that you were acting in good faith. This will help when you try to recover fees in the future. However, don’t let a date that is months away scare you away from filing the lawsuit.

Appeal administratively

- Research indicates that a third of the time an administrative appeal will cut records loose, saving you the hassle of litigation. Appeal the

agency's lack of response or its denial. At the federal level this will force you to wait another 20 working days before suing, as the agency will have to lapse on the deadline for the appeal as well. At the state/local level, a simple letter to the agency asking for it to reconsider its decision can suffice and show the court you are reasonable. Some states allow you to appeal to the attorney general or an independent commission (e.g., Connecticut).

- Be sure to submit the administrative appeal to the appropriate FOIA appeals inbox. FOIA allows you to appeal the failure to comply with a request, which is called a "constructive denial." Although this will delay your ability to sue right away, it will show the court that you were trying to avoid litigation and were trying to work the issue out with the agency versus the courthouse.

Exhaust all other options

Sometimes the best way to get public records is through cajoling, political pressure, public shaming, or skillful negotiation.

- Narrow the request to specifically what you need.
- Publicize the denial, focusing on how it affects average people. Go up the ladder to elected officials to ask why their agency is hiding information. Request the same record of peer agencies and note their deviance (research shows the pressure causes agencies to cough up records – nobody wants to appear deviant).
- These and more tactics are outlined in the CQ Press book, "The Art of Access: Strategies for Acquiring Public Records," by David Cuillier and Charles N. Davis.

Get support

- If you get nowhere with an administrative appeal and decide to sue, apply for aid to help cover your costs (make sure to keep receipts for all expenses related to the request/suit, such as parking, mailing, court fees, etc.):
- The National Freedom of Information Coalition Knight Litigation Fund (<https://www.nfoic.org/knight/>) provides assistance for court fees.
- The Society of Professional Journalists' Legal Defense Fund offers funds toward attorney fees (<https://www.spj.org/ldf.asp>). In both grant cases, you have to apply, but it's a simple process.
- Check with media law attorneys in your area to see if anyone will take it pro bono or on contingency. This could save you a lot of time and heartache.

Taking them to court

After considering the above, it is time to sue. Ask the agency one last time for an estimated completion date in an effort to further show that they, not you, are the ones being unreasonable. If you get rebuffed or ignored, sue. Here is how:

1. Get to know the court

If it's a federal FOIA case, look up U.S. District Court in your area and visit the courthouse. For a federal record, you are allowed to sue in the U.S. District Court where you live, the U.S. District Court where the records are kept, or the U.S. District Court of the District of Columbia. It is probably easiest to sue in the district court where you live if you need to go to an oral hearing. If it's a state/local record, visit your county courthouse. Many court websites have sections designed for pro se parties, including forms and examples of complaints. Refer to these. If they don't, refer to the local rules, specifically the section about commencing or initiating a civil action. Courts do things differently, and some will require you to provide a cover sheet, notice of interested parties, or other documents. If in doubt, call or visit the court clerk's office. Be friendly. Clerks are usually helpful, and while they can't give legal advice they are usually willing to answer procedural questions.

2. Write the complaint

The meat of your suit is the "complaint," which states who you are, who you are suing, what happened, and what you want. It launches the lawsuit. You need to provide sufficient information to say what you want and why (because you were wronged). However, do not make the mistake of including all your arguments in the complaint. The government has the burden of proving that they met the legal standard to deny your public records request. Don't argue something when you don't have their argument in front of you. Also, don't give them ideas as to what to argue. Don't try to write it to sound like a lawyer. Just write it clearly. Follow the court rules, which outline the exact process, even the formatting of complaints, such as font and margin size. Some courts provide complaint templates. To see a sample complaint online, go to bit.ly/SampleComplaint.

3. Fill out the summons

The summons notifies the government that it is being sued. Download the summons template from the court website under the forms section. Do not sign the summons, the clerk will. Prepare three versions. When serving the federal government, you need to serve the Department of Justice U.S. Attorney General, the Civil Process Clerk for the U.S. Attorney's Office of the district you are suing in, as well as the agency you are suing. Your complaint also needs exhibits, such as the records request, agency acknowledgment, and any communications with the agency. If the agency has an overlying

“department,” such as the Federal Aviation Administration under the Department of Transportation, sue both agencies. It is likely you will need to take three copies of everything to the courthouse. One will be for the clerk, one for the judge, and one for you. You will then use your copy to make the additional copies needed to serve the government with the lawsuit.

4. Go to the courthouse

Now that you have everything ready, head over to the courthouse. If you are suing for federal records, go to your nearest U.S. District Court. If you are suing for local/state records, head to your nearest county courthouse. Unfortunately, most courts do not allow pro se individuals to file cases online. Be sure to go with the filing fee, which can be paid with credit card. At federal court that can run about \$400, and county courts for local/state records cases are usually less. See page 4 where you can apply for funds from the NFOIC Knight Litigation Fund. When you arrive, go to the civil clerk’s office, and explain you want to sue. Give them the documents you have, and they will take care of the rest. They will return stamped copies to you. While there, ask about the possibility of seeing filed documents online. This will greatly reduce the time it takes to receive documents filed in your case.

5. Serve the agency

Now you need to notify the government that it has been sued. You must serve all the defendants (the agency/department), and in the case of the federal government, the U.S. Attorney General at the Department of Justice, and the Civil Process Clerk at the U.S. Attorney’s Office in the district you sued in. You can do this by certified mail with return receipt. Note, however, that someone else must serve the documents. This can be your family member, neighbor, etc., as long as they are over 18, and not the person suing. In your mailing, include all the documents you filed with the court, including the summons, and a “proof of service” form, which you can obtain from the clerk. Note that you normally have to utilize the “other” checkbox on the form since you are suing the government instead of a person, and the rules for serving the government are different. Do not sign the form, but make copies. Just include the form in the mailing. This notifies everyone of the date they were served. Service can take several weeks, as the mail slows down once it reaches the post office which serves the agency while it goes through the needed security screenings. It will take a few days to get back the green cards proving that the documents were served. Make copies of those cards, and fill out the rest of the proof of service form, and mail three copies of that to the Clerk of the Court. This will tell the court that you did your part with serving the government and sets the date by which the agency needs to reply.

6. Wait for an answer

The “answer” is the agency answering every paragraph of your complaint. For the most part. The agency will likely deny most everything you claim, except what you included in an exhibit or that can be easily proven by you. Do not take the answer personally. At the federal level, the government has 30 days to file an answer. Some courts incorrectly issue a 60-day summons but government lawyers will typically take steps to correct this mistake. The next step will likely be that a government lawyer calls you or emails you. Note, this person represents the government, not you. However, you must work together to reach a resolution in your case, as you don’t have a lawyer. At the federal level the DOJ will request an extension to filing an answer to the complaint you filed. It is a good idea to grant this. The DOJ will try to resolve the issues without resorting to further litigation. It is possible that the DOJ will get the agency to respond to your request and avoid the need to file an answer. In this situation, the case will be dismissed through a joint request or stipulation. Be sure to read the joint request for provisions stating you won’t be allowed to recover the money from the court expenses you incurred. If so, reach out to the DOJ and let them know not to include that provision. You can try to recover court fees as a pro se litigant (that doesn’t include copy fees, attorney fees, or fees for your own time).

7. Haggle

The next stage will involve some back and forth communications, and might lead to closing the case immediately. Some courts require the parties meet and prepare a joint proposal for deadlines; others make the deadlines themselves. It is possible that portions of the request you submitted can be resolved during this phase. The agency might be willing to negotiate, seeing you are serious. Check online with resources such as the Federal FOIA Appeals Guide at www.rcfp.org/federal-foia-appeals-guide to see if any claimed exemptions are worth disputing. If something is not worth disputing, advise the agency that you will not object to those portions of their response. If no issues remain, the case should be dismissed by mutual consent. If issues remain, dispositive motions are next.

8. Respond to dispositive motion

A dispositive motion attempts to get the judge to dispose of the case from the get-go. This can be done through one of two ways: Motion to Dismiss or Motion for Summary Judgment. Read the agency’s dispositive motion carefully. At the federal level, utilize the Reporters Committee guide noted above, as well as the DOJ litigation guide specific for the exemptions invoked -- <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>. For a Motion for Summary Judgment, you must identify that the agency is 1) not correct in one of the facts which would decide the case and/or 2) the agency is not entitled to judgment in its favor. Using the guides noted above, work on a “Response to the Motion.” Check the local rules to see how much time

you have to file. If you would like more time, request the agency consent to an extension, and then, with that consent (or denial), ask the court to approve. Work on your response carefully. Explain why the records are important to the public. Include as much information in your briefs as possible in case a new judge is assigned to the case. Make constant revisions. Attack the agency's arguments, and make sure you read and understand the arguments the agency is relying on. If the agency missed an important part required to be able to survive claiming the exemption, make sure to state that. Your response to the motion needs to comply with any page limits and formatting noted in the local rules for that court. Also, you must use a "Statement of Facts" for every single material fact you rely on. A material fact is something important that can decide the case. Your motion will basically have a lot of in-text citations to the Statement of Facts, similar to that of the agency's. You will then have a separate Statement of Facts Document, similar to the agency's, and each Statement of Fact must be supported by adequate evidence. This evidence can be either a declaration, or, an exhibit. Keeping the Statement of Facts, argument, and exhibits organized is the most time consuming portion, but be sure to do it right, because it will help your case. When responding to the motion, research the cases the agency uses to support its argument. Find distinctions between your case and the cases cited. Show that to the court. Also, review the evidence carefully – if the agency provides a declaration or affidavit and then jumps to conclusions using words not in the declaration or affidavit, point that out. Below the title of your response, state that you want an Oral Hearing or Argument, if you want one. This can be good for your case if you feel speaking to a judge can help. However, do not think of this court appearance as another way to introduce newly found arguments into your case. File your response with the court after it is completed and be sure to provide the agency, DOJ and U.S. Attorney with a copy.

9. Respond to agency reply

Next, the agency will file a "reply" to your "response." It is also likely that the agency will look at your response and ask for an extension to file a reply. They might want the extension just to have it, or maybe they actually want to provide additional records in an effort to avoid the judge deciding the issue. Communicate with the agency to see what their position is shortly after filing the response. Next thing you know you may have more documents. After the reply is filed, you are not allowed to file another reply without consent from the court. Typically, this consent isn't granted except for circumstances where you can show that the agency's reply was introducing substantially new information which you haven't had a chance to attack.

10. Oral arguments or final decision

The judge may schedule an oral hearing, or simply decide the case without a hearing. Either way, be sure to read the judge's decision carefully. If you lose the case, consider meeting with an attorney to review your appeal options.

11. Moving for costs

If you win the case, or if the case was dismissed after a joint request, it is possible you can recover costs if you substantially prevail. Refer to the local rules for the time limits to do this, and apply using the forms on the court website to "tax" costs. Be sure to keep the agency informed and provide them with a copy of the forms. In your forms, provide additional information proving that you are eligible and entitled to recovery of costs. Costs are in the form of printing, parking, mailing, case filing, etc. You are eligible and entitled if you won't use the documents obtained for commercial purpose, and if the agency "changed position" as a result of the lawsuit. All those estimated status date requests at the beginning come in handy now.

12. Plant that head on a pike

Publicize your brilliant victory and thank all of those who helped. Make sure the word is out in your community, nationally through SPJ and NFOIC, and throughout the government community, so everyone knows about the win. Plant that head on a pike as a warning to other recalcitrant agencies that illegal denials will be thumped in court. Submit a new public records request asking for all agency communications pertaining to your initial request and lawsuit. That can help you learn about their thinking for the next time you sue. Revel in your tenacity and efforts to protect democracy and the people's right to know. Huzzah!

Access resources

David Cuillier

Joseph L. Brechner Freedom of Information Project

www.brechner.org/FOI

This nonpartisan center at the University of Florida has focused on research and education in freedom of information since 1977, providing resources, tips and strategies for those seeking public records.

MuckRock

<https://www.muckrock.com/>

This nonprofit helps people get public records. Has thousands of records posted that have been acquired through more than 150,000 public record letters nationwide since 2010. Great place for record ideas and tips. Also guides to the law for each state.

Reporters Committee open government guides

<https://www.rcfp.org/open-government-guide/> (then click on your state)

A great guide to the public records law and open meetings law in every state. It describes the different pieces of the law in plain English. A must-have resource for everyone.

Reporters Committee legal hotline

800-336-4243 or online at <https://www.rcfp.org/legal-hotline/>

Free advice for journalists in acquiring records at the federal level and assistance with state-level queries.

Sunshine Week

<https://sunshineweek.org/>

This national initiative, conducted since 2005, promotes freedom of information every March, timed with James Madison's birthday. Coordinated by the Joseph L. Brechner Freedom of Information Project since 2023 (before then, by News Leaders Association, formerly American Society of News Editors).

State coalitions for open government

<https://www.nfoic.org/>

Nearly every state has a coalition for open government, which provides assistance in accessing records. Check the National Freedom of Information Coalition Web site for a coalition in your area. Also, NFOIC has a litigation fund for suing agencies over records.

Office of Government Information Services

<https://www.archives.gov/ogis>

The federal agency, started in fall 2009, is the federal ombudsman for FOIA. Have a problem with an agency? Contact them and see if they can help.

Society of Professional Journalists

<https://www.spj.org/foi.asp>

This group provides information about freedom of information, including a blog and resources. The "Open Doors" publication has document-based story ideas, check the guide to FERPA and other issues.

Investigative Reporters and Editors

<https://www.ire.org/>

This group has an online resource center (for members) that includes a searchable database of more than 30,000 investigative stories and a searchable database of 8,000 tip sheets.

Student Press Law Center

<https://splc.org/>

This nonprofit center provides free legal assistance to student journalists. Check out the Web site for the publications and searchable database on a variety of student media law issues. It also includes a super FOIA letter generator that caters to each state.

The National Security Archive

<https://nsarchive2.gwu.edu/>

Tips for accessing public records through FOIA, as well as federal records.

NFOIC Knight FOI Fund

<https://www.nfoic.org/knight/>

Can provide court costs for suing for public records.

SPJ Legal Defense Fund

<https://www.spj.org/ldf.asp>

Can provide up to \$5,000 quickly for legal aid in a suit, and can request more if deemed a worthy case.

Society of Environmental Journalists

<http://www.sej.org/>

Environmental story archive that provides ideas for data and FOIA orders.

Free Expression Legal Network

<https://freeexpression.law/>

Coordinates more than 40 law clinics at universities, many of which provide free legal aid for public records litigation.

Data.gov

<https://data.gov/>

A keyword searchable website for finding federal agency databases. Also, try the Department of Justice's FOIA Wizard to aid you in getting federal records (<https://www.foia.gov/wizard.html>).

Google News Alerts

<https://news.google.com>

Go to Google News, click on "News Alerts" then set up alerts with keywords such as "public records request" and "freedom of information" and Google will send you links to stories that contain those keywords.

Google Dataset Search

<https://datasetsearch.research.google.com/>

This application, launched September 2018, allows you to do a keyword search for finding databases posted online by government agencies, academics and news organizations (anyone who sets up the metadata to be found by Google). Millions of datasets included.

The FOIA Project

<https://foiaproject.org/>

Part of the Transactional Records Access Clearinghouse at Syracuse University, this center tracks FOIA litigation and requests.

FOIA Wiki

https://foia.wiki/wiki/Main_Page

Set up by the Reporters Committee for Freedom of the Press, this is a comprehensive resource for everything about federal FOIA.

Right to Information Global Ratings

<https://www.rti-rating.org/>

Rates the more than 140 FOIA laws in the world and provides details about each law's legal provisions. Spoiler: U.S. ranks 78th, below Mexico, Russia and Kyrgyzstan. The best FOIA law in the world? Afghanistan.

Access Audit Toolkit

<https://www.spj.org/foitoolkit.asp>

Looking to conduct an access audit in your community? Check out this guide, created for the Society of Professional Journalists by Charles Davis.

Government's Attic

<https://www.governmentattic.org/>

Posts a variety of federal documents, including FOIA logs.

Hello, it's Reveal

<https://revealnews.org/article/hello-its-reveal/>

A great Adele “Hello” spoof of problems getting access to government by Reveal – The Center for Investigative Reporting.

India Needs a Superhero

<https://www.youtube.com/watch?v=vvZeo6BWiRw&t=5s>

A powerful 3-minute video that shows the power of FOI anywhere in the world.

What is a Photocopier?

<https://www.youtube.com/watch?v=PZbqAMEwtOE>

Humorous video re-enactment of a real deposition in a records fee lawsuit, 2014, The New York Times Verbatim

Ashley's Totally Basic FOIA Tutorial

<https://www.youtube.com/watch?v=ZDTT70x3vME>

Humorous explanation of what a FOIA request is, 2017, Full Frontal with Samantha Bee

Democracy in Jeopardy!

<http://www.youtube.com/watch?v=eGmTdu4cC54>

Fun Flash animation, 2007, produced by the former OpenTheGovernment.org

How to File a FOIA Request

<http://www.youtube.com/watch?v=X3CtKpXrE1A>

Comedic old-style instructional video on filing a request, 2008, by Rob Heidrick

The Art of Access: Strategies for Acquiring Public Records

A 200-page paperback book guide by David Cuillier and Charles N. Davis, published by Sage in 2010, and then as a second edition 2020. Buy online at Amazon. More information, contact Cuillier at cuillierd@ufl.edu.