

Keeping public records public: Strategies for getting access during the pandemic



Miranda Spivack,
journalism fellow at the Brechner Center for
Freedom of Information at the University of
Florida

Mark Walker,
FOIA coordinator in The New York Times'
Washington Bureau

What's public?

If something is enforced, inspected, licensed, or purchased, there is probably a public record.

The screenshot shows the City of Albuquerque website header with navigation links: Services, One ABQ, ABQ To Do, Explore, Jobs, Get Around, Business, Community, Transparency, Departments, and A-Z. The breadcrumb trail is Home / Planning / Building Safety & Permits. The main content area is titled "Building Safety & Permits" and includes a description of the division's role, a "What We Do" section, a "How We Serve You" section, and "Application Contact Information".

Navigation

- > I Want To ...
- > Online Planning Permitting & Applications
- > Download Forms & Applications
- > Planning FAQs
- > AGIS - Maps
- > Building Safety & Permits
- > Building Safety Contacts
- > Building Safety ePlan Submissions
- > Building Safety Forms, Reports & Permit Searches
- > Current Building Codes

Building Safety & Permits

This division issues building permits and conducts inspections for new construction, additions and remodeling work.

What We Do

Building owners are required to maintain their buildings to ensure a safe environment for the citizens of Albuquerque. The Building Safety Division provides services that ensure that buildings within the City of Albuquerque are built and maintained to the correct building standards and codes.

How We Serve You

If you are planning a new construction, addition or remodeling project, you can apply for building permits at the Building Permit Office, located at 600 2nd NW or [online](#).

Application Contact Information

- **In-Person Applications office hours:** 8 a.m. to 5 p.m., Monday through Friday.
- **Telephone:**
 - Building Safety Division permits desk: (505) 924-3964
 - Building Safety Division main line: (505) 924-3320.

What do federal and state FOIA usually cover?

-Executive agency documents, data, recordings, most contracts, appointment calendars, emails, texts.

-Does not cover Congress or Judiciary, mostly exempt. State legislatures and courts mostly exempt.

-State laws are similar, but not identical. Try to get fees waived. Check your state open records law here:

<https://projects.jsonline.com/apps/state-secrets/>

<https://www.muckrock.com/news/archives/2018/mar/14/state-public-records-data-map/>

Tools: Bring back face-to-face beat reporting!

Basic beat reporting- get to know the record keepers

Get a tour, ask what is generally available, get the record retention schedule

Find out what the fees are and if they can be waived because your reporting is in the public interest

Ask about regular reports - weekly, monthly, annually that the agency is required to make to the state or federal government. How are these reports recorded and stored?

Ask about financial documents, contracts, bond documents, anything that backs up payments to vendors, employees, elected officials



How open is my state?

In most states, these entities are subject to disclosure:


- state, county, city, town government
- police and sheriff's departments
- charter schools- but wide variation
- public-private agencies, such as economic development
- public universities, community colleges
- accreditation reports
- public school systems and school boards and budgets
- audits, 990s for nonprofits, p3's records
- 911 records and tapes
- correspondence to and from the public, texts, emails
- campaign finance reports, financial disclosure, salaries

State Secrets: Open government laws across the nation

With state and local government secrecy on the rise in many U.S. jurisdictions, this database offers a view of state open records and open meetings laws, and provides information about how to get what you are looking for, as well as ensure that government is operating in the sunlight.

You can navigate it by selecting a state from the drop-down menu.

Related stories: [Local governments hide public records, face few consequences](#) | [Public contracts shrouded in secrecy](#)

Select a state to see its report card 

<https://projects.jsonline.com/apps/state-secrets>

NAUGHTY & NICE: THE STATES



PRIVATIZATION: PUBLIC SECRETS

Where to go for help

- [Reporters Committee for Freedom of the Press](#) has created a FOIA generator. If you fill out a few questions, it will create a request, appeal and complaint for you to print, sign and mail.
- [Society of Professional Journalists](#) has a guide with a great overview of FOIA laws and procedures.
- [National Freedom of Information Coalition](#) has more sample letters for FOIA and Privacy Act requests, appeals and amendments.
- [Student Press Law Center](#) provides a generator for state open records law requests.
- [Federal agency FOIA offices](#) provides a comprehensive list of federal FOIA offices.
- Reporters Committee for Freedom of the Press may be able to litigate your FOI cases. By phone: 1-800-336-4243; By email: hotline@rcfp.org
- [Muckrock](#) has knowledgeable people on staff who can offer advice.
- First Amendment Coalition, a California-based organization that may be able to litigate your FOI cases and help out with FOI requests nationally, but likely can only litigate if in CA. Hotline: <https://firstamendmentcoalition.org/legal-hotline/>
- State affiliates of American Civil Liberties Union, whose protections for the Bill of Rights include extensive litigation and support for the First Amendment. <https://www.aclu.org/about/affiliates>
- Society of Professional Journalists Forever Fund, a legal defense fund that has a pretty easy application process, and whose support from several foundations is growing. <https://www.spj.org/firstamendmentforever.asp>
- Local bar association can refer you to a pro bono lawyer with expertise in public records
- Some states have state ombudsmen who can help

Sample request letters

- <http://www.nfoic.org/sample-foia-request-letters>
- <http://www.foiadvocates.com/samples/1.html>
- <http://nsarchive2.gwu.edu//IMG/SampleFOIAletter.pdf>
- <https://www.muckrock.com/questions/is-there-a-good-fbi-foia-request-sample-letter-603/>
- <https://firstamendmentcoalition.org/public-records-2/foia-sample-request-letter/>

NPCij2020!

Questions?

mirandaspivack@yahoo.com

@mirandareporter

Read my series, “State Secrets,”

<https://www.revealnews.org/topic/state-secrets/>

A Broken System?

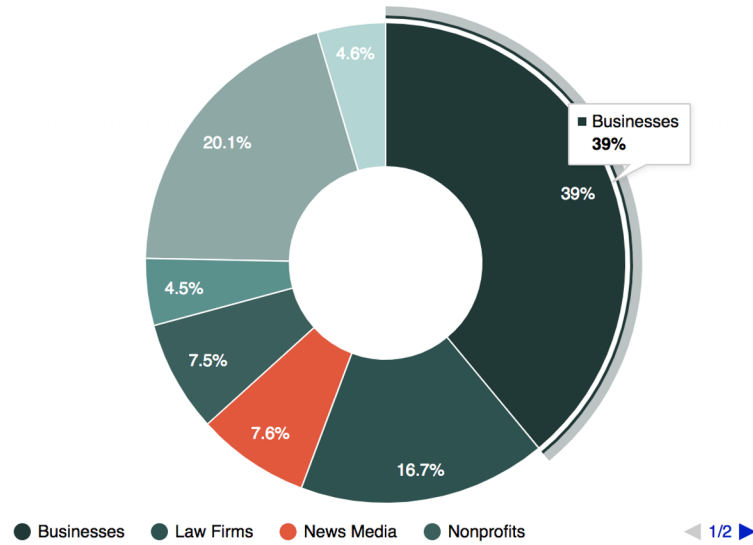
VII.A. FOIA REQUESTS -- RESPONSE TIME FOR ALL PROCESSED PERFECTED REQUESTS

	SIMPLE				COMPLEX				EXPEDITED PROCESSING			
	MEDIAN NUMBER OF DAYS*	AVERAGE NUMBER OF DAYS*	LOWEST NUMBER OF DAYS	HIGHEST NUMBER OF DAYS	MEDIAN NUMBER OF DAYS*	AVERAGE NUMBER OF DAYS*	LOWEST NUMBER OF DAYS	HIGHEST NUMBER OF DAYS	MEDIAN NUMBER OF DAYS*	AVERAGE NUMBER OF DAYS*	LOWEST NUMBER OF DAYS	HIGHEST NUMBER OF DAYS
**												
Office of the AG ^(a)	46	104	1	598	682	656	227	1,465	88	148	12	357
Office of the DAG ^(a)	102	133	7	833	758	830	586	1,465	179	190	34	357
Office of the Assoc. AG ^(a)	48	82	5	353	N/A	N/A	47	47	N/A	N/A	N/A	N/A
Antitrust ^(a)	10	17	1	94	328	458	2	2,341	N/A	N/A	N/A	N/A
ATF ^(a)	11	13	1	209	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
BOP ^(a)	4	15.87	<1	247	27	40.37	<1	246	1	2.4	<1	10
Civil ^(a)	8	18	1	127	N/A	N/A	N/A	N/A	17	19	17	28
Civil Rights	5	11	<1	49	94	118	50	337	N/A	N/A	N/A	N/A
CRS	8	9	2	28	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Criminal ^(a)	N/A	N/A	N/A	N/A	107	830	<1	6,659	75	69	33	98
DEA ^(a)	N/A	N/A	N/A	N/A	82	126.39	1	1,273	112	127	61	210
ENRD ^(a)	28	52.49	4	483	N/A	N/A	95	218	N/A	N/A	N/A	N/A
EOIR ^(a)	21	27	1	528	71	84	10	460	13	18	1	41
EOUSA	52	208.69	<1	2,940	N/A	N/A	N/A	N/A	268	641.48	19	2,397
EOUST	N/A	N/A	N/A	N/A	114	142	3	401	N/A	N/A	N/A	N/A
FBI ^(a)	8	49	1	1,259	302	374	1	1,265	59	109	1	512
FCSC	20	15.7	2	20	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
JMD ^(a)	11	16.2	1	93	42	73.2	2	430	N/A	N/A	N/A	N/A
NDIC	18	28	5	227	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
NSD	5	13	1	157	84	136	35	664	14	37	7	90
COPS	1	3.6	1	27	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
ODR	10	11	1	18	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
OFDT	5.5	13.33	2	132	64	65.33	56	76	14.5	17.5	3	34
OIP ^(a)	9	19	<1	563	686	686	143	1,229	N/A	N/A	N/A	N/A
OIG ^(a)	8	23	<1	317	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
OIPL ^(a)	39	55	16	174	344	344	47	640	N/A	N/A	N/A	N/A
OJP ^(a)	8	12.99	1	133	40.5	60.8	1	451	N/A	N/A	N/A	N/A
OLC ^(a)	35	46.8	1	191	134	253.5	53	572	N/A	N/A	N/A	N/A

The Ugly: A Broken System?

WHO MAKES FOIA REQUESTS?

Share of FOIA requests by requester category (85 agencies combined)



Before you file

- **What are you looking for?**
 - FOIA and Records Requests applies to documents, not information
- **Can you get the information elsewhere?**
 - Check web sites and agency e-reading rooms
 - Try calling the agency to see if you can get the data without filing a request. (If you can, avoid the communications office)
- **Do your homework**
 - Know what you're looking for
 - Learn how/where/why that information is kept

Formulating the request

- Be specific. Be clear. Be human.
- The request must “reasonably describe” the records
 - It should enable “a professional employee of the agency who is familiar with the subject area of the request to locate the record with a reasonable amount of effort” (i.e., think like a FOIA officer)
- You can’t ask questions, and you can’t make “broad, sweeping requests”
 - Be specific: keywords, custodians, date ranges, domains etc.
 - Avoid ambiguity (words like “related to”).

Other key components of your request

Format of requested documents: Requestors are entitled to have the records given to them in whatever format the agency maintains it in.

Response time: State and federal agencies have a statutory timeframe on when they need to initially respond to your request.

Fee Waiver: Ask that all fees for producing your FOIA be waived because you are member of the media. Beware some state don't have media fee waivers.

Expedited Processing: Seeks to continue to have your FOIA processed on the Requires a bit a research.

Seek expedited processing

- An agency must make a determination on a request for expedited processing within 10 calendar days.
- If an agency grants a request for expedited processing, it must process the request “as soon as practicable”
- At least 2 bases for expedited processing:
 - Failure to obtain records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual
 - With respect to a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public concerning actual or alleged Federal Government activity

Tips for obtaining expedited processing

- Tie your request to a concrete event in the near future
 ☐ be specific
- Don't forget to certify (i.e., statements are “true and correct to the best of [the requester's] knowledge and belief”)
- Appeal!

Timing of agency response

- In principle, the agency must make a “determination” within 20 business days
 - In “unusual circumstances,” agency may extend deadline, usually by no more than 10 additional business days
 - Agency doesn’t necessarily have to give you records then, but it has to tell you when it will do that
- Ask for an estimated date of completion

Format & fees

- Format of the records
 - Must be produced “in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”
- Fees
 - Fee category – representative of news media (only duplication fees for 100+ pages – scanning, uploading, etc.)
 - Fee waivers – limited or no fees where information is “likely to contribute significantly to public understanding of the operations or activities of the government” be specific

Tips: Keeping track of FOIA/FOIL requests

Date	Agency	Level	Request	ID number	Status	
3/30/18	MTA HQ	Authority	Lhota calendar for August, Sept and Oct 2017	180330-000456	RECEIVED 4/11/18	
4/1/18	CUNY	University	All work order tickets		Acknowledged; estimate 5/7/18	Extended; estimate 8/6/18
4/1/18	Mayor	City	All emails with Carranza	2018-002-00191	Acknowledged; estimate 5/11/18	Extended; estimate 7/27/18
4/1/18	Mayor	City	All emails with Carvalho	2018-002-00192	Acknowledged; estimate 5/11/18	Extended; estimate 7/27/18
4/3/18	Governor	State	All emergency declarations		INADEQUATE RESPONSE 4/10/18	APPEALED 4/23/18
4/3/18	Governor	State	All executive orders		INADEQUATE RESPONSE 4/10/18	APPEALED 4/23/18
4/4/18	MTA HQ	Authority	Costs of Lhota security detail	180404-000557	DENIED 5/26/18	
4/4/18	MTA Police	Authority	Costs of Lhota security detail	180404-000558	NO RECORDS 4/5/18	
4/5/18	Governor	State	Comms with other govt agencies for March storms		Acknowledged; estimate 6/11/18	Extended; estimate 7/9/18
4/5/18	Governor	State	All comms by Dani Lever on 3/21/18		Acknowledged; estimate 6/11/18	Extended; estimate 7/9/18
4/8/18	ESD	Authority	All economic impact reports by Eimicke and co	#2506	Acknowledged; estimate 5/16/18	Narrowed on 5/29/18
4/13/18	TLC	City	Basic info on Cohen medallions		Submitted	RECEIVED 7/6/18
4/13/18	TLC	City	Any records on Cohen selling medallions		Submitted	NO RECORDS 7/6/18
4/13/18	TLC	City	Disciplinary records on Cohen medallions		Submitted	RECEIVED 7/6/18
4/13/18	TLC	City	Comms btwn Cohen and TLC		Submitted	Narrowed on 7/6/18
4/13/18	TLC	City	Mileage and fares for Cohen medallions		Submitted	DENIED 7/6/18
4/13/18	Chicago Taxi	Other	Basic info on Cohen medallions		RECEIVED 5/1/18	
5/8/18	JCOPE	State	Lhota's financial disclosure statement		RECEIVED 5/9/18	

Story from state public records



The C.D.C. Waited 'Its Entire Existence for This Moment.' What Went Wrong?

The technology was old, the data poor, the bureaucracy slow, the guidance confusing, the administration not in agreement. The coronavirus shook the world's premier health agency, creating a loss of confidence and hampering the U.S. response to the crisis.

Story from Federal FOIAs

FEMA's Hurricane Aid to Puerto Rico and the Virgin Islands Has Stalled

Two years after Hurricanes Maria and Irma, records show the agency's work on long-term recovery on the islands is crawling compared with some states on the mainland.



Story from FOIA lawsuit

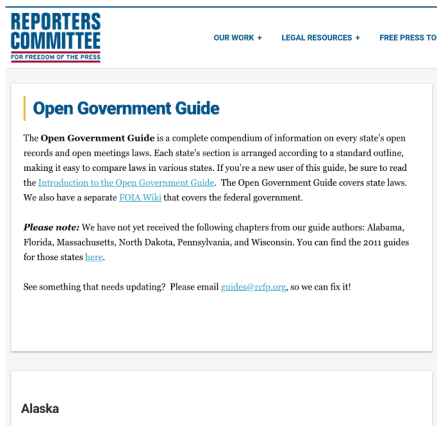


The New York Times

A 'Bridge' to China, and Her Family's Business, in the Trump Cabinet

Elaine Chao has boosted the profile of her family's shipping company, which benefits from industrial policies in China that are roiling the Trump administration.

Resources



Reporters Committee for Freedom of the Press

<https://www.rcfp.org/open-government-guide/>

MuckRock Public Records Guides

<https://www.muckrock.com>

Questions?