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

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What’s public?

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

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/](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](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](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
- https://www.muckrock.com/questions/is-there-a-good-fbi-foia-request-sample-letter-603/

Questions?

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@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

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The Ugly: A Broken System?
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

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<th>Date</th>
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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.
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.
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?