

FOIA, Press Freedom

Foundations of Journalism
Emerson College
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FOIA

- Freedom of Information Act
 - Law enacted in 1966 that gives citizens the right to request information and documents from the government.
 - Not just for journalists.
 - Recommended you identify yourself as a journalist.
- Gives access to all records of all federal agencies in the executive branch.

Access

- Laws exist to give journalists (and general public) access to government information and records.
- Laws at federal and local level.
- These laws include:
 - FOIA
 - Sunshine
 - Open Meeting
 - Public Records

FOIA

- Process for obtaining access to documents of the federal executive branch and restricts government's rights to withhold documents from the public.
 - Outlines the necessary process/steps.
- Who FOIA applies to:
 - FOIA applies to the executive branch of the federal government.
 - Every agency,
 - Department,
 - Regulatory commission,
 - Government controlled corporation (e.g. Post Office)

FOIA

- Who you cannot FOIA:
 - Congress, federal courts, private corporations or federally funded state agencies.
 - Documents from these groups filed with executive agencies become subject to disclosure
 - Does not apply to President or his immediate staff.

Records

- Records you can FOIA
 - Phone records,
 - Email records,
 - Budgets,
 - Commission reports,
 - Investigation findings,
 - Expense reports,
 - Salaries,
 - Etc.

Exemptions

- Information is excluded if it falls under one of nine categories:
 1. Ongoing law enforcement organizations
 2. Some law enforcement records (including confidential informant identity)
 3. Personnel regulations
 4. Classified documents and documents that could impact national security
 5. Confidential information (trade secret, privileged commercial/financial information)
 6. Personnel and medical records
 7. Privileged inter-agency or intra-agency memorandum or letter
 8. Records related to examination, operating, or condition reports about financial institutions that the SEC regulates or supervises
 9. Records containing exempt information about oil or gas wells

Exemptions

- Agency must explain exemptions.
- Cannot withhold an entire document/record if only part is exempt.
 - Can only withhold the exempt part.
- You can contest an exemption.
 - File an administrative appeal.
 - Then file a lawsuit.

Steps

- First make a phone call.
 - You might not even need to submit a FOIA request. They might just give you the records.
- Talk to FOIA officer.
 - Every agency has one.
- May be required to submit a FOIA request.

Submitting a FOIA request

- FOIA request must be submitted in writing.
 - Phone call doesn't count.
- Do not need to tell the agency the specific reason that you want the information.
- You should be as specific as possible in what you're looking for.
 - At minimum, you must “reasonably describe” the material you want.
 - Specific enough so that an employee can find it physically or in the computer system.

Submitting a FOIA request

- Can submit the same request to multiple agencies.
- Send via registered mail with a receipt.
 - Save for your records.

Submitting a FOIA request

- Limit your request
 - If possible (or involving a LOT of records), state what your request does and does not include
- They can deny your request based on inadequate description.
 - If this happens, refine and resubmit.
- If told materials don't exist, research further.
 - Rewrite with more specifics or description.

Timeline

- Response to a request is define as releasing the records or denying your request.
- Agency has 20 working days to respond to your request.
 - Agency request a 10-day extension.
 - Stay on top of your request. Follow up.

Timeline

- Can request an expedited review.
 - Must grant request or deny expedited review within 10 days.
 - If you request expedited review, must say why.
 - Only reasons for expedited review:
 - Health and safety
 - Urgency to inform public about actual or alleged government activity.

Timeline

- If agency refuses to disclose all or part of documentation or doesn't respond within 20 days, appeal to agency's FOIA appeals officer.
 - Try continuing to work with FOIA officer as well.
- If that appeal is decline or no response received within 20 days, can file a federal court lawsuit.

Cost

- Media does not have to pay any FOIA search/retrieval costs.
- 100 pages free copies.
 - Reasonable copy costs after that.

Sunshine Laws

- Similar to FOIA, but at a state and local government level.
- State statutes that provide public access to governmental agency meetings and records.
 - Vary by state, but relatively similar

Basics

- Government meetings and records are presumed open.
 - Can close meetings, but need to show proof that such a move is necessary.
- Access laws are written for the benefit of the public.
- Framework for managing public business.

Open Meetings Law

- The right to attend meetings
 - Vary by state by state
- In general, a board, council commission or other governing body expressly created by the state statute or executive order and committees created by boards, councils, commissions, etc., are covered.

Open Meetings Law

- If you're being told a meeting that you believe should be open is being closed, question and challenge the decision.
- If meetings are being held via phone or Web, you still have the right to listen/watch.
- Laws normally require that a majority vote be taken to go into closed session.
 - Demand votes be taken.

Open Meetings Law

- Reason a meeting can be closed:
 - Personnel issues
 - Business transactions
 - Litigation
 - Investigating wrongdoing

Open Meetings Law

- Get 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 and accurate in your reporting.
- Nail down time and location

Public Records Laws

- Allows access to public records.
 - Vary by state to state.
- Covers:
 - Records,
 - Documents,
 - Recordings,
 - Etc.

Public Records Laws

- Most public records laws don't require a written or in-person request, but it's best to have one for your records.
- Should not exceed 10 business days. Cannot exceed 20 calendar days.
 - Ask for timetable.

Public Records Laws

- Similar to FOIA, can charge a “reasonable fee”
 - Can charge you for copies and time of person pulling the records.
 - FOIA can’t charge you time.
 - Request estimate in advance.
 - Request to be made aware if certain fee is hit.
 - Make sure your editor is looped in/signs off on cost.

Public Records Laws

- If request is denied, ask for specific reason why.
- Often request denials are discretionary.
- If they deny your request, put that in your story.

Press Freedom

- The First Amendment:
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
- United States ranks 22nd, according to 2012 Global Press Freedom Rankings.

Press Freedom

- Shield against prior restraint
 - Government cannot in advance stop anyone from publishing/broadcasting news.