

# Negotiating for data

## How to get what you want without getting a headache

### STARTING LINE

1. **GO INWARD** : Outline what it is you want. What is your scope? What is your timeframe? How soon do you need it? What has your experience been with this agency? How sensitive are these data? How much data do you need? Do you want an entire database? Do you want a slice of data based on specific parameters? Do you want very specific records that you can identify?
2. **HAVE A CONVERSATION**: If you're not too worried about revealing what you're trying to do, it's worth picking up the phone and talking to someone with the agency about how they store their data, how they access it, what software/programs they use and what sort of time frame you might expect. Establish your contacts and figure out who is responsible for the technical and legal aspects of your request. Talk to the data guy in the trenches. Some agencies welcome this call more than others, but it's worth a try.
3. **GET THE LAW OF THE LAND** : Prep yourself on the federal or that state's laws regarding the type of data you're requesting and how agencies treat requests for electronic records. You can find federal rules and laws specific to each state on the website for the Reporters Committee for Freedom of the Press at [www.rcfp.org](http://www.rcfp.org)

*Remember that there's a person on the other end of your request. If you blindside him/her with a complex or voluminous request out of the blue, that person might respond right away by pushing back. Instead, give a sense of what's coming and ask nicely for their cooperation.*

### ON YOUR WAY

1. **BULLETPROOFING** : The better your request is on the front end, the better your chances of getting a fast and comprehensive response. Make sure you're using the right terminology. Specify a time range, if possible. Cite the law that applies to your records, and not just the general citation of the state or federal open records law but the actual sections of the law that pertain to whatever it is you're requesting (data on employee disciplinary hearings, budget figures, crime reports, etc.). There are a number of letter generators out there (iFoia.org , FOIAMachine.org, and the Student Press Law Center [www.splc.org/page/lettergenerator](http://www.splc.org/page/lettergenerator)) that will help you craft the basic request, but you need to research the rest and insert it.
2. **TIMELINE** : Whether you use a letter generator or write it from scratch, you'll specify in there somewhere what the agency's legal requirement is for responding. But along with that, give them a deadline. It might not help, because some agencies just take all the time in the world. But put it in – and make it reasonable – just in case it gives your request priority. And make sure you follow up when the legal deadline and your deadline approaches, as well as any extensions. If it makes sense for the data you're requesting, ask them to send it to you as it's available instead of waiting for all of it to be ready because of redactions, the need to access archived data, etc.
3. **NEGOTIATE**: Be open to modifying your request. Stay firm on getting what you need, but the agency could offer some suggestions that will get you the data you need but will eliminate records you don't need and shorten the time it takes to process your request. For example, if you ask for cell phone logs for all employees with a particular school or office – and even a database of those records requires some redactions – do you really need \_every\_ employee? If you want a database of all police reports, do you also need every parking citation?

4. **TECHNICAL DIFFICULTIES:** One way that some agencies try to dodge requests is by saying they don't have the technology to extract what you want or it's just too labor intensive. Neither one of those is a legitimate excuse to withhold records under the law. And frankly, it's likely not true, unless you're requesting older datasets. But

*Four things to do if you get the tech blowback: 1. Ask to speak to someone in their IT department. 2. Ask for their database record layout. 3. Request their latest contract/purchase agreement with their software vendor and call that vendor. 4. If available, contact the state public records ombudsman, AG or equivalent*

even then, it might involve more work but it's not impossible. One issue you may run into is redactions. Agencies can legitimately redact information and there may be instances where they can't do it en masse (i.e. simply by withholding one field in a database). That said, most redactions, including those in PDFs, can be made electronically now. Although redactions could add more time/expense to your request, they shouldn't be a reason for denial.

5. **COST :** Agencies can sometimes be difficult to deal with when it comes to cost for data requests, especially if they're not used to providing datasets. If you get sticker shock, first ask the agency for an itemized breakdown of what

it's charging. Second, check the law to see if you can find any obvious ways to challenge what they're trying to charge you. Third, one common provision in the law is that they have to use the lowest-paid person capable of doing the job. I've had success challenging excessive fees by doing the math and suggesting a story about city administrative assistants making \$100,000 a year based on the hourly rate in the estimate. Fourth, some agencies invoke issues of proprietary software or deals they have with third-party vendors. Their contract cannot usurp the public records law.

## FINAL STRETCH

1. **PERSIST V. PEST :** You need to strike the right balance between being persistent and being a pest. Between being polite and being a pushover. Don't immediately threaten legal action if they throw up a roadblock (especially if you're not really prepared to take it). Take your cues from the agency and whether or not you think it's making a genuine effort. If you craft a legitimate request and the law is on your side and you get a nasty letter from the agency saying it's not going to give you anything because it's just too much work, then you can certainly get stern. One tactic that works for data – or any other records – is raising the possibility of reporting on their lack of transparency and how it could be perceived as 'hiding something.'
2. **DECODE :** Keeping a good relationship with the agency is important because you're likely going to have questions about the data. What do certain fields mean? Is there a code sheet? How do you handle duplicates, missing data, and any other issue that might crop up? Don't be afraid to ask, because knowing up front can save you from making major mistakes several days, weeks or months down the road.
3. **BRICK WALL :** If you have an agency that won't budge on your request, you can do a few things. Reach out to someone higher up in the organization. For example, if you're trying to get police records and the PIO isn't helping you, reach out to the city attorney. If the university athletic department won't give you its payroll, contact the university president. Depending on the state, you can appeal to an attorney general or records ombudsman, but many states don't have something like that. If you have an attorney who will just write a 'nastygram,' that might be enough. But there are times where your only recourse may be to go to court.

*Remember that your records request and correspondence are also likely subject to disclosure. Don't put anything in an email that a) would embarrass you if it got out, b) would compromise your story and c) would show any sort of malice or bias that is not constructive to the debate over disclosure.*