

Tips when negotiating for data and federal records

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The federal FOIA, 5 U.S.C. 552

- Access to records of federal agencies in the Executive Branch.
- The agency has to provide a good reason for holding records back; see the nine exemptions.

Averting problems from the start

- **Be as specific as you can.** Asking for *“all emails sent to or from Deputy Undersecretary John Jones since the beginning of time”* will likely set your request back months or years.
- **Go to the correct agency.** For many federal FOIAs, knowing the right records custodian is half the battle. Conversely, the same documents or data you’re seeking may be at another agency, with potentially more-promising results.
- **Give a good reason** why your request should be expedited. Just being a member of the press isn’t enough, especially in light of some agency regulations.

Dealing with delays

- **Stay on top of your request.** Federal agencies have 20 working days to respond to your FOIA. A friendly call to the FOIA office doesn’t help.
- **Ask for documents on a “rolling basis.”** This prevents the FOIA office from waiting until they have everything responsive before putting it in a big box or on CD. Asking for your documents may also slightly mitigate copying delays.
- **Be nice ☺.** FOIA officers have to deal with a lot of requests — most of which are not from journalists, and some are from folks who think Apollo 11 was staged in Hollywood. So, be courteous. A handwritten note to a very helpful FOIA officer couldn’t hurt.

When things go wrong

- **Push back.** The law allows a requestor to appeal. Sometimes, the FOIA officer either didn't fully understand (or read) the letter. Clearly state your reasons under the law why your records should be released. (See the Reporters Committee guides at rcfp.org).
- **Go to OGIS.** The Office of Government Information Services is a nascent agency in the National Archives charged with, among other things, mediating FOIA disputes. You should administratively appeal your request first before going to them.
- **Go nuclear if it’s really egregious.** If an agency wants to charge you \$50 million, go to the press office and say this is fodder for a story. (It’s newsworthy if an agency is deliberately obfuscating your request, especially if the records are of public importance.) You might also get the records pried loose in the process.
- **Sue** the agency.

Usual data excuses — state or federal

- **“We can’t create a record for you.”** This usually stems from literal reliance on statute. It really means something that stands to reason: They can’t create something that doesn’t exist. But asking for a column to be formatted differently — or encrypted to protect privacy — is different.
- **“It will cost you \$28,298,109.”** This common tactic conflates the law on paper copying fees, such as \$0.25 per page. Calmly explain that electronic records don’t endure the same kinds of reproduction charges as paper records, unless they’re using a 1972 mainframe. (That alone might be a story.)
- **“It’s prohibited/private/super-duper secret.”** Use the law to your advantage. After all, they’re using it keep you from the records. Many states have specific statutes or court-derived exemptions under which records can’t be released. But exempt records often must be redacted and the remainder disclosed.

General tips for getting data

- **Work with IT folks.** Yes, you may have to go through the front office or the FOI officer at first to get the records. But getting access to the system administrator will pay dividends. They’ll be resistant at first, but once you build a relationship with them, getting records should be a breeze. Also helps when the PR folks think you’re speaking a foreign language (say, SQL).
- **Source up.** FOI requests are just one way to get data and documents. If you cover an agency, make friends with people who have access to data. They, at the minimum, could provide you with clues about where the data are stored.
- **Be persistent.** This goes for reporting in general, as we all know that “no” is only a beginning. This also applies to filing records requests regularly: The more you engage with an agency on public-records requests, the better.
- **Write about denials.**

Some kinds of electronic records to seek

- Internal emails
- Emails from third-party servers
- Telephone logs
- Text messages
- Payroll records
- Contracts
- Database metadata
- Performance/testing data
- Disciplinary logs
- Copies of hard disks
- Ghosts of work phone
- Network access logs
- Meeting minutes
- Internal memoranda
- Other FOI requests