

FOIA Denials and Delays



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Dealing with FOIA Denials and Delays

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READY

Find the records.

Get to know the exact records you will want, identify who has them and whether they have ever been released before. One way to do this is to obtain a log of prior FOIA or public records requests from the agency. Some ways to identify the records include blank forms, inspector general and audit reports and lawsuits that have used the records.

Take a tour. Get a roadmap.

Ask for a tour of the organization that holds the records. Ask about what is in the file cabinets, what someone is doing behind the computer. Ask if you can take a copy then and there. ALWAYS bring a flash drive (or key drive) with you when you go out – you never know what someone will give you.

Identify everyplace the records are held.

Try to find other places that hold the same records, or some version of them. Sometimes you can find them at local, state, and federal levels. Other times multiple agencies will have copies. And don't forget special interest groups that might already have gotten them.

SET

Ask for records before you need them.

FOIA was never meant to be a deadline tool. You usually won't get documents or databases on demand, so file in anticipation of what you need.

Develop a strategy, and talk with officials about it.

Ask if you can get an index to documents, preferably in electronic form, then file for the specific items as part of the same request. Just make sure that you can piggyback on your original request.

Avoid FOIA when you can.

Although you can't depend on it, try to get the documents or data without going through the formal FOIA process. You might try asking for them directly, but also letting the agency know you're going to file the FOIA just to get the clock ticking.

Add something you can give up.

You want to be expansive in your request so you will ask for things that aren't clearly public, or that have been denied in the past. Ask for items that are not necessarily public, but not clearly private. Ask them to use their discretion and release it anyway. If nothing else, you are asking for something you can give up during negotiations later.

Consider whether you can qualify for expedited processing.

Federal FOIA has a fast track for records requested that are in the public interest and are of immediate concern to the general public. But use it carefully – some agencies can be particularly hard on you if you try to use it when it's not appropriate. Look for upcoming congressional hearings or elections or policy debates that will strengthen your case. And it only works if you are willing to divulge, generally, why you want the records.



Get specific.

When you're filing, make sure to be as specific as you can. Cite the name of the set of records you want them to search or the name of the database you want them to provide.

Check in. A lot.

Call the person handling your case regularly to see how it's going, and to see whether there is anything you can do to simplify their job and to make sure they understand the request. Don't lose your cool: The people who are getting you the records are being hammered from within as well.

Get an interim copy of the records.

You might be able to get a special interest group or lawyer to give you a copy of the records that you don't want to use as your final copy, but can at least tell you what might be in them or how you might use them. Same goes for an old copy of a database. You don't want to use these as your final version or the ones that you depend on, but they can get you started.

Consider suing quickly

Some requests are so crucial to your news organization that you can't afford the wait. In federal FOIA, you are allowed to sue as soon as the first deadline is missed. The Post, ACLU and others have gotten favorable rulings at times on these cases.