



Open Records: Turned down. Now what?

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1. Get records
 - Continue to request public records.
 - Request them long before you have to have them
2. Try the informal approach first, then a written request
 - Before filing a formal request – ask for the records
 - If they require a formal request, find out who it should go to and what you should ask for
 - Letter should describe what you're asking for under the FOIA
 - State that they should reply within 20 business days (your state may have other time limits)
 - Request an itemized cost estimate if charges exceed a certain amount
 - Provide all possible contact information
 - Note that you're willing to negotiate
 - Ask for a fee waiver
 - Ask for expedited review
 - Consider inspection rather than copies (not always possible)
3. Do your homework.
 - Know what you're looking for.
 - Know what they can charge you for records. Note: You may save money requesting electronic records/data rather than printouts.
 - Know the agency's history by checking FOIA annual reports
 - For state stuff – check prior court decisions, AG opinions
4. If the required time period passes with no response – follow up. Do not let a sleeping request lie. If you are denied, appeal.
5. Know what is covered by FOIA: Records in possession or control of a federal agency.
 - They don't have to give you "information" – just records
 - FOIA doesn't cover: Congress, courts, answers to questions, the President. Some of these are covered by other laws.
6. Know the exemptions and how they may be used:

FOIA Exemptions

 - I. National Security
 - II. Internal agency personnel rules – these should be used only internally
 - III. Information exempted by other laws (pay attention here) – Common statutes cited here protect things such as contract proposals or grand jury information. Other more obscure statutes include the Watermelon Research and Promotion Act and the Honey Research, Promotion, and Consumer Information Act to withhold information.
 - IV. Trade secrets and confidential commercial information
 - V. Internal agency memoranda and policy discussions – "inter-agency or intra-agency"
 - VI. Personal privacy

- VII. Law enforcement investigations (part 7 c protects privacy for law enforcement reasons)
- VIII. Federally regulated banks
- IX. Oil and gas wells

7. Don't be tripped up by HIPAA

Congress passed the Health Insurance Portability and Accountability Act in 1996 and the law went into affect in April 2003. It was designed to protect patient information and covers entities that electronically transfer patient information. It can affect reporters' access to hospital directory information, billing data, discharge data and other records.

Reporters have been hit with HIPAA when trying to get ambulance, police and fire department records. **JUST BECAUSE SOMETHING IS HEALTH-RELATED, DOESN'T MEAN IT'S COVERED BY HIPAA.** The agency should be able to specify how they are covered by HIPAA. In some cases, ambulance services that also do billing have been designated as HIPAA-covered entities. Check your state attorney general opinions for HIPAA decisions.

8. Know the law and the FOI experts in your state who are resources on the law.

9. Set the tone with your sources on FOI. Educate, educate, educate!

10. Be firm and aggressive with custodians — but also be nice.

11. Don't let the documents or materials you request gather dust. Officials won't take you or your news organization seriously if you ask, they provide and you don't follow through.

12. Ask to inspect materials before you seek copies. In some cases, perhaps you need a slice, not the loaf.

13. Think beyond documents when pondering requests.

15. Get on the FOI-related listservs in your state and beyond. There are great sources for educating yourself about records issues and FOI trends.

16. Write stories about denials of public records. This is a tool we as journalists don't use nearly enough. *The Dallas Morning News* has a biweekly public records column called "Citizen Watchdog," (www.dallasnews.com/watchdog)

Resources:

- The Reporters Committee for Freedom of the Press: www.rcfp.org. Check out "How to use the Federal FOI Act," "The Open Government Guide" and "Access to Electronic Information"
- Brechner Center's Citizen Access Project: Lots of info on state access -- www.citizenaccess.org
- Investigative Reporters and Editors -- www.ire.org/foia. Check the IRE resource center for other tip sheets on FOIA and open records.
- Freedom of Information Center at the University of Missouri -- foi.missouri.edu
- Society of Professional Journalists -- www.spj.org/foia.asp
- The National Freedom of Information Coalition -- www.nfoic.org (Go here for links to state organizations)
- Justice Department's FOIA page (includes links to FOIA officials and annual reports) - www.usdoj.gov/oip/index.html



And don't forget your state freedom of information coalition, press organizations or attorney general.

Notes: No animals were harmed in the creation of this tip sheet. Materials from the very talented Ken Ward, Jr. were used for this handout.