

# Acquiring Records: Effective Requests

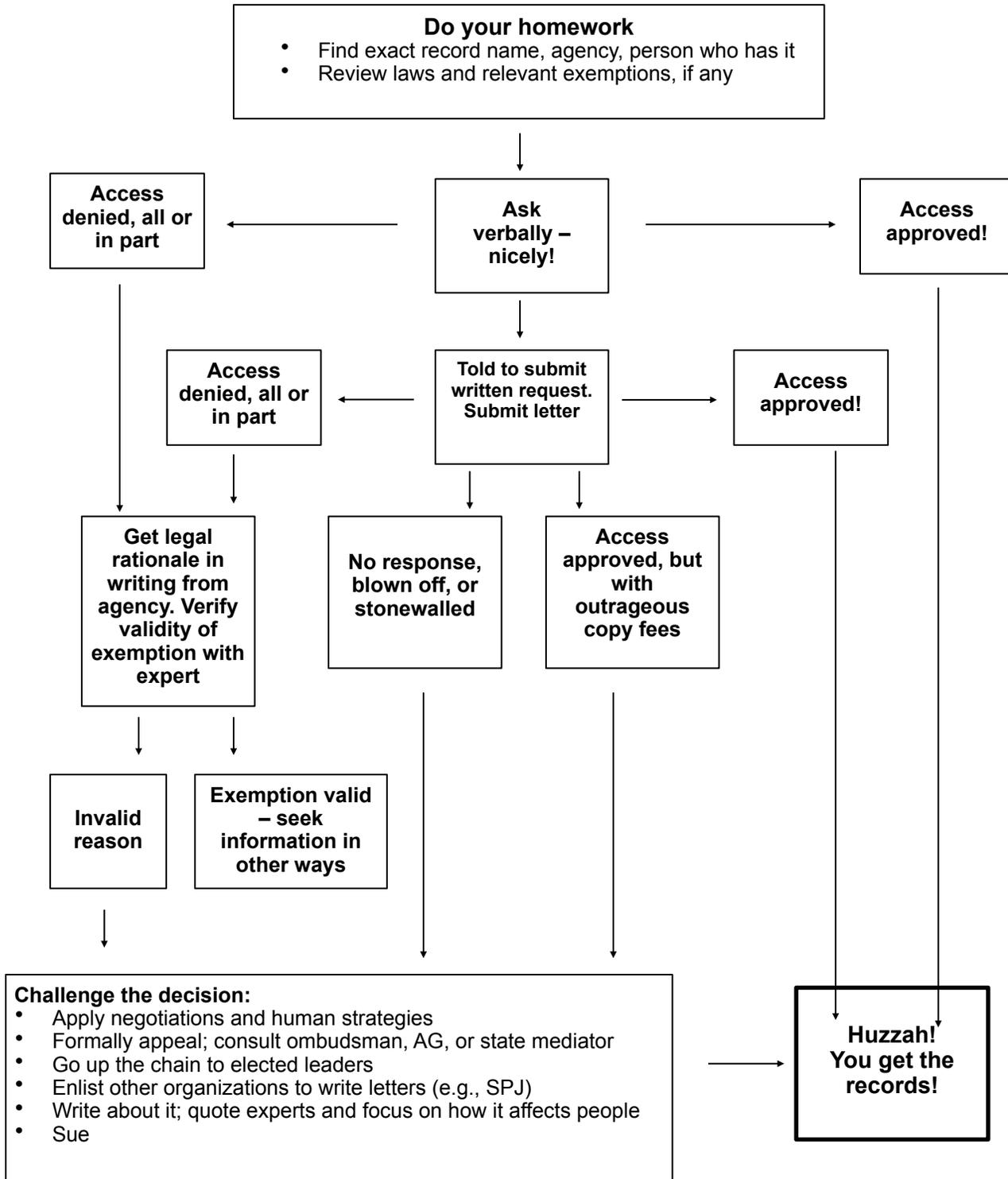
Society of Professional Journalists  
and the Sigma Delta Chi Foundation  
David Cuillier, Freedom of Information Committee  
May 2011

## Contents

Records Request Process_____	2
Planning Your FOI Request _____	3
Sample Request Letters (nice, neutral, mean)_____	6
Access Resources_____	9

**About the Trainer:** David Cuillier, Ph.D., is a member of the SPJ Freedom of Information Committee and has been an SPJ newsroom trainer since 2005. He is an associate professor of journalism at the University of Arizona in Tucson, where he teaches public affairs reporting, computer-assisted reporting and access to public records. Before entering academia he was a public affairs reporter and city editor for a dozen years at daily newspapers in the Pacific Northwest. He is co-author with Charles Davis of *The Art of Access: Strategies for Acquiring Public Records* and researches the psychology of access. He provides news and tips about FOI at [www.theartofaccess.com](http://www.theartofaccess.com) and <http://blogs.spjnetwork.org/foi/>, and he can be reached at [cuillier@email.arizona.edu](mailto:cuillier@email.arizona.edu).

# Records Request Process



## Learn the law

See the online FOI module about learning the law for more discussion. Public records laws require government agencies to provide anyone the right to look at a record (or pay for a copy) that is held by a government agency subject to the law.

You can become fairly knowledgeable by reading a summary of your state public records law provided by the Reporters Committee for Freedom of the Press at: [www.rcfp.org/ogg](http://www.rcfp.org/ogg). Also, check your state open government coalition or press association for guides they might put out.

Here are some basics of access law:

- No law requires an official to talk to you, but records laws require agencies to let you see documents or data.
- “Record” generally includes any format of recorded material, including paper, audio tapes, video, data, e-mail, and even the electronically embedded properties information in a Word file. Be creative.
- Federal executive agencies (e.g., FBI, but not the Supreme Court or Congress) are subject to the federal Freedom of Information Act. State executive agencies, cities, school districts and other local public agencies are subject state public records law. Be sure to know the name of your state law, and don’t ask for a record from your local school district based on federal FOIA.
- Other laws may apply, such as the Family and Educational Rights and Privacy Act for protecting educational records or the Health Insurance Portability and Accountability Act for medical records.
- Some records may be kept secret if there is a law that says the record may be kept secret, usually to protect national security, privacy invasion, etc.
- Some laws and agencies require a written request.
- Agencies are required by law to respond to records requests within a certain amount of time, depending on the law. They may provide the records, deny them in whole or in part (legal reason in writing), or say they need more time.
- Most laws are discretionary, which means an agency can give out the information even if an exemption allows them to keep it secret.
- Denials may be appealed to the agency. A requester can also sue, in some states recouping his or her legal fees by substantially prevailing in court.
- When in doubt, ask for the record. It is up to the agency to prove it is secret, not for you to prove it is public.
- See the Access Law Resources, page 9, for more helpful guides and information.

## Know the record

Identify exactly what you want to the best of your ability. Here are some tips for finding the existence of records:

- Check the agency's website to see if the record is provided online. Or perhaps information is provided online about the specific record.
- Visit or call the agency and talk to a clerk or person who would know what records are kept that would have the information you need.
- Look for original blank forms that the agency keeps to know what kinds of information is kept and how it is kept.
- Look at an agency's retention schedules or records indexes to find what kinds of records are kept.
- Ask to see the log of public records requests to see what other people have requested.

## Request the record

- **Avoid fishing.** Try to limit your request to what you really want. If you simply ask for "all files relating to" a particular subject, you may give the agency an excuse to delay its response, and you risk needlessly running up search and copying costs. Do your homework. Go talk to the agency first.
- **Get specific.** Cite relevant newspaper clips, articles, congressional reports, etc. If the records have already been released, let the agency know the date, release number, and name of the original requester. If you are asking for a database, talk with the techies ahead of time to know exactly what data you are requesting and in what format. Tour the agency office and ask about what they are working on and specific documents they maintain.
- **Ask verbally.** Ask for the record verbally in person first, if possible.
- **Be polite but persistent.** The people on the other side of the counter don't come to work with horns and cloven hooves. They are people too, and they are more likely to get you what you want faster if you are nice about it, especially at the beginning.
- **Prioritize.** Let the agency know if you'd like to receive information in a particular order. Materials could be reviewed and released to you in chronological or geographical order - or you may simply not want to wait for all the records to be reviewed before any are released.
- **Submit a written request.** If you anticipate balking, bluffing, or being passed around or put off, simply submit a public records request letter, which starts the clock ticking and requires them to act and stop passing you around or delaying. On the following pages see a sample state public records request letter generated from online request letter generators.
- **Choose your tone.** Note the last paragraph of the request letter that threatens litigation. Threaten to sue only if you are prepared to do so and if they've indicated they will not cooperate. Also, consider whether the

wording may create defensiveness or hostile undermining of your request (e.g., delays). Sometimes it's better to attract flies with honey than vinegar. But at other times, coming in strongly and quoting the law can demonstrate you are serious and know what you are talking about (research indicates the threatening letter gets more agencies to respond).

- **Decide on your own transparency.** Legally, you don't have to say who you are or why you want the documents. As a practical matter, you'll probably have to tell them your name and provide a phone number so they can contact you. Also, some states have different standards for commercial users, so you might have to sign a statement saying you aren't a commercial user (they don't consider journalists as commercial users). If you don't care if the agency knows why you want the information, feel free to tell them. It's likely to speed the process and they might offer other information that you didn't request. But if that would jeopardize your investigation, then don't tell them. If they ask, "Why do you want that information? Are you going to write something negative?" Just tell them, "I don't know what I'm going to write until I gather all the facts," which is true.
- **Go to the top.** Sometimes going straight to the agency's lawyers or top officials speeds things up. Clerks sometimes deny requests or stall as they try to make sure they don't release something that will get them in trouble. Once the agency attorneys look at it and see it should be released, it often is.
- **Keep records of records.** Keep track of every step of your different requests. Keep dates, contact names, phone numbers and try to correspond by email so you can have written records of what was said to whom. Some requests can last years, so keeping track of details can help.
- **Follow through.** After you submit a request, always follow it through to the end, especially if they provide the records, even if months after you need it. Also, if denied initially don't skulk away cowed. If you have a legal right to the information keep at it. How you treat requests and denials will affect how agencies treat requests in the future. Educate officials and get them in the habit of providing information to you and the public. It's part of their job.

## Sample request letter: Friendly version

June 10, 2011  
Cactus School District  
450 West 6<sup>th</sup> St.  
Prickly, AZ 85364

RE: Public records request

To whom it may concern,

I know you are busy, but I want to thank you in advance for helping me gather some public records regarding superintendents and high school coaching salaries. I am writing to request a copy of the contract for the district superintendent, including pay and any other compensation he or she might receive. Also, if your district has a paid high school head football coach, or several head coaches, I would like a copy of that person (or persons') contract, including pay and any other compensation they receive for their duties.

I would be happy to pay copying and postage fees and help in any way I can, but if the cost is more than \$5, please contact me and let me know. If the files are available electronically and would be more convenient to copy and email, then that would great too.

I would very much appreciate a response by the end of the month, and if there is information that I am not entitled to, please let me know. I understand that sometimes some information doesn't warrant disclosure for statutory reasons, and might need to be blotted out while releasing the public part.

If there is anything I can do to help with the request, please do not hesitate to let me know (email is the fastest way to reach me).

Thanks again for your help!

Sincerely,

John Jones  
1212 Main St.

Needles, AZ 85745  
520-555-1111  
jones@email.com

**Sample request letter: Neutral version**

This letter is based on the Reporters Committee for Freedom of the Press online generator, available at [www.rcfp.org/foialetter/index.php](http://www.rcfp.org/foialetter/index.php)

June 10, 2011  
Cactus School District  
450 West 6<sup>th</sup> St.  
Prickly, AZ 85364

RE: Public records request

To whom it may concern:

Pursuant to the state open records act, I request access to and copies of the contract for the district superintendent, including pay and any other compensation he or she might receive. Also, if your district has a paid high school head football coach, or several head coaches, I would like a copy of that person (or persons') contract, including pay and any other compensation they receive for their duties.

I agree to pay reasonable duplication fees for the processing of this request.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act.

Thank you for your assistance.

Sincerely,

John Jones  
1212 Main St.  
Needles, AZ 85745  
520-555-1111  
jones@email.com

**Sample request letter: Legalistic threatening version**

This letter is based on the Student Press Law Center letter available at [www.splc.org/foiletter.asp](http://www.splc.org/foiletter.asp). You might remove the threatening paragraph toward the end.

June 10, 2011  
Cactus School District  
450 West 6<sup>th</sup> St.  
Prickly, AZ 85364

RE: Public records request

To whom it may concern:

Pursuant to the state open records law, Ariz. Rev. Stat. Ann. Secs. 39-121 to 39-126, I write to request access to and a copy of the contract for the district superintendent, including pay and any other compensation he or she might receive. Also, if your district has a paid high school head football coach, or several head coaches, I would like a copy of that person (or persons') contract, including pay and any other compensation they receive for their duties.

If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address.

I agree to pay any reasonable copying and postage fees of not more than \$5. If the cost would be greater than this amount, please notify me. Please provide a receipt indicating the charges for each document.

I would request your response within ten (10) business days.

If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material.

Please be advised that I am prepared to pursue whatever legal remedy necessary to obtain access to the requested records. I would note that willful violation of the open records law can result in the award of legal costs, including damages and reasonable attorney fees. See Ariz. Rev. Stat. Sec. 39-121.02.

Thank you for your assistance.

Sincerely,

John Jones  
1212 Main St.  
Needles, AZ 85745  
520-555-1111  
jones@email.com

## Access Resources

### **Society of Professional Journalists**

<http://www.spj.org/foi.asp?> and <http://blogs.spjnetwork.org/foi/>  
Provides information about freedom of information. The “Open Doors” publication has document-based story ideas, check the guide to FERPA, and see the Sunshine Network with experts for each state. See the FOI FYI blog at <http://blogs.spjnetwork.org/foi/>

### **State coalitions for open government**

<http://www.nfoic.org/nfoicmembers>  
Nearly every state has a coalition for open government, which provides assistance in accessing records. Check the National Freedom of Information Coalition Web site for a coalition in your area. Also, NFOIC has a litigation fund for suing agencies over records.

### **Reporters Committee for Freedom of the Press**

<http://www.rcfp.org>  
This group explains how to use FOIA, provides an online request letter generator (for FOIA and state laws), and provides easy-to-understand explanation of state public records laws (<http://www.rcfp.org/ogg/>). Find guides to accessing health records and other information.

### **Student Press Law Center**

<http://www.splc.org/>  
This nonprofit center provides free legal assistance to student journalists. Check out the Web site for the publications and searchable database on a variety of student media law issues. It also includes a super FOIA letter generator that caters to each state.

### **The Art of Access blog**

<http://www.theartofaccess.com>  
The blog, by David Cuillier and Charles Davis, provides more tips and story ideas on accessing public records, as well as resources for requesters and teaching FOI.

### **State record ombudsman**

About half the states have some sort of mediator or ombudsman to help requesters and agencies settle disputes over records. Check with your state attorney general's office.

### **iDig Answers**

<http://www.idiganswers.com>  
“Hit records” provides hundreds of document ideas for stories and tips, by records expert and Florida journalist Joe Adams.

### **The National Security Archives**

<http://www.gwu.edu/~nsarchiv/>

Tips for accessing public records through FOIA, as well as tons of federal records.

### **Citizen Access Project**

[www.citizenaccess.org](http://www.citizenaccess.org)

This Web site out of the University of Florida provides information about access laws in each state, including a rating for whether different aspects are good or bad.

### **Investigative Reporters and Editors**

[www.ire.org](http://www.ire.org)

This group has an online resource center (for members) that includes a searchable database of more than 20,000 investigative stories and a searchable database of 2,000 tip sheets. Also check out the Extra! Extra! daily stories: <http://www.ire.org/extraextra/>

### **Society of Environmental Journalists**

[www.sej.org](http://www.sej.org)

Environmental story archive that provides great ideas for data and FOIA requests.

### **Center for Investigative Reporting**

<http://centerforinvestigativereporting.org>

Story blog with great ideas for document-based stories.

### **Freedom of Information Center**

<http://www.nfoic.org/foi-center>

Information about access in all the states, including a listing of public records audits and studies. Out of the University of Missouri – Columbia.

### **WikiFOIA**

<http://sunshinereview.org/index.php/Portal:WikiFOIA>

Provides information and news about access issues nationally.

### **Alltop Freedom of Information**

<http://freedom-of-information.alltop.com/>

A compilation of FOIA blogs with top stories and postings.

### **State Sunshine blog**

<http://openrecords.wordpress.com/>

State Sunshine blog with news about FOIA issues nationally. A good list of links.

### **Office of Government Information Services**

<http://www.archives.gov/ogis/>

The federal agency, started in fall 2009, is the federal ombudsman for FOIA. Have a problem with an agency? Contact them and see if they can help.

### **OpenTheGovernment.org**

<http://www.openthegovernment.org/>

An advocacy group with news and reports about access to federal records.

### **Sunshine in Government Initiative**

<http://www.sunshineingovernment.org/>

Check the FOIA files for hundreds of stories produced with public records.

### **Google News Alerts**

<http://news.google.com>

Go to Google News, click on “News Alerts” then set up alerts with keywords such as “public records request” and “freedom of information” and Google will send you links to stories that contain those keywords.