The Freedom of Information Act
What the Government Doesn’t Want You to Know, and How You Can Find Out

Presentation for:
Conservative Political Action Conference
Washington, DC
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Agenda

- JW: Investigations, Litigation
- History of FOIA
- Understanding and Using FOIA
- Requests, Denials, Appeals & Exemptions.
- Record Analysis & Exploitation.
- Examples, What Ifs, Q&A.
Judicial Watch

- Promotes transparency, integrity, accountability.
- In government, politics & the law.
- As an:
  - Educational foundation,
  - Public interest law firm,
  - Member of the media.
- Use of open records & open meetings laws.
- Fidelity to the Rule of Law.
History of FOIA

- 1955-65: John Moss, Donald Rumsfeld
- July 4, 1966: LBJ enacts FOIA
- 1972-74: Problems, Oversight Hearings
- 1996: “E-FOIA” amendments
- 2007: OPEN Government Act
- January 2009: Obama’s FOIA memorandum
FOIA Overview

- Can be used by anyone, regardless of citizenship.
- No requirement to show purpose or need.
- Must be in writing, including fax/email.
FOIA Overview

- All executive agencies are subject to FOIA, including EOP & independent regulators.
- **Not** subject to FOIA:
  - Congress & the Courts.
  - Personal staff of the President.
  - State & local governments (State laws).
  - Private entities/corporations.
FOIA Overview

A proper request:

- Reasonably describes the records sought.
- Complies with the agency’s published regulations.
- Requester should always clearly state contact info for clarification.
FOIA Overview

Who can make a request?
- “Any person.”
- Individuals, corporations, associations, state & local governments, foreign governments.

Exceptions -- those not permitted:
- Federal agencies.
- Fugitives.
- Foreign governments re: intelligence.
FOIA Overview

What is an agency record?
- Created or obtained by an agency.
- Under agency control.
- Includes paper, tapes, digital, photo, video, electronic, etc.
- Must provide in form requested if “readily reproducible.”
FOIA Overview

- **Time Limits**
  - 20 working days to respond.
  - One 10 working day extension for:
    - Searching/collecting records from other offices.
    - Voluminous responsive records.
    - Consultation with another agency/component.
  - Agencies can NOT charge fees on overdue FOIAs
FOIA Overview

- **New time limit “circumstances”:**
  - **Unusual** -- involves field offices, voluminous records, or consultation with 2(+) components or an outside agency.
  - **Exceptional** -- involves workload excuses tied to demonstrating backlog reduction - OR - requester refusal to reasonably modify/clarify a request or time frame.
FOIA Overview

- Expedited Processing
  - Compelling need -- imminent threat to life or physical safety of an individual.
  - Urgency to inform the public concerning FedGov activity from a requester primarily engaged in disseminating information.
  - Agencies can create other standards.
FOIA Overview

- The Search for Records
  - Reasonably calculated to locate responsive records.
  - Not locating all requested records does not cast doubt on an otherwise reasonable search.
  - Applies to electronic records as well.
  - “Consultations” & “Referrals.”
FOIA Overview

- **Administrative Appeals.**
  - Designated agency official reviews procedure.
  - All or part of request denied, or no responsive records located.

- **Judicial Review.**
  - Lawsuit in US District Court.
    - Your locality.
    - District of Columbia.
FOIA Overview

- **Fees**
  - Agencies may charge reasonable direct costs.
  - OMB established a uniform fee schedule.
- **Types:**
  - Search
  - Review (commercial requesters only)
  - Duplication
- Time limit violation voids assessment.
FOIA Overview

More re: Fees

News media & non-profits:
- Acknowledgment of evolution of news delivery.
- Duplication fees only -- 100 free pages.

“Other”:
- Search & duplication charges.
- 2 hours & 100 pages free.

Payment in advance over $250.
FOIA Overview

Resources & References

- Judicial Watch Open Records Project.
- JW Website.
  - www.JudicialWatch.org
- Department of Justice FOIA Guide.
  - www.usdoj.gov/oip
- Reporters Committee for Freedom of the Press.
  - www.rcfp.org
Records Analysis & Exploitation

- You’ve got your records -- now what?
  - Goals of original request met?
  - Administrative and/or legal action.
  - Public education.
    - Reports, newsletters, etc.
    - Media opportunities
- The request in hindsight.
- “Externals” of record production.
Claims of Exemption.

- 9 categories of information that may lawfully be exempt from disclosure.
- 3 “exclusions” for law enforcement purposes.
- Can be challenged in an appeal.
- Challenged by judicial review.
Exemptions

- **b(1)** -- Classified information ("Glomar").

- **b(5)** -- “deliberative process” or not available by law to a party in litigation with the agency.

- **b(6)** -- Privacy. “Personnel and medical files and similar files” where disclosure “would constitute a clearly unwarranted invasion of personal privacy.”

- **b(7)** -- Ongoing law enforcement (LE) proceedings.
Exclusions

- **c(1) -- LE “Glomar”**
- **c(2) -- LE informant, unless officially confirmed -- then releasable.**
- **c(3) -- Special category FBI records.**
JW’s “Open Records Project”

- Defining requirements & composing records request strategy.
- Identifying agencies, components, activities.
- Making the request.
- Record production review and analysis.
- Handling denials, exemptions & appeals process.
- Litigation
Discussion Period

- Examples
- What ifs
- Q&A
- FOIA “War Stories”
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