

Strategies for effective requests

ACCESS ACTION AGENDA

- Do your homework
- Write effective letters
- “Get to yes” through principled negotiation
- Apply hard tactics if necessary

You know what record you want, who has it and the law that says it’s public. Now it’s time to go get it.

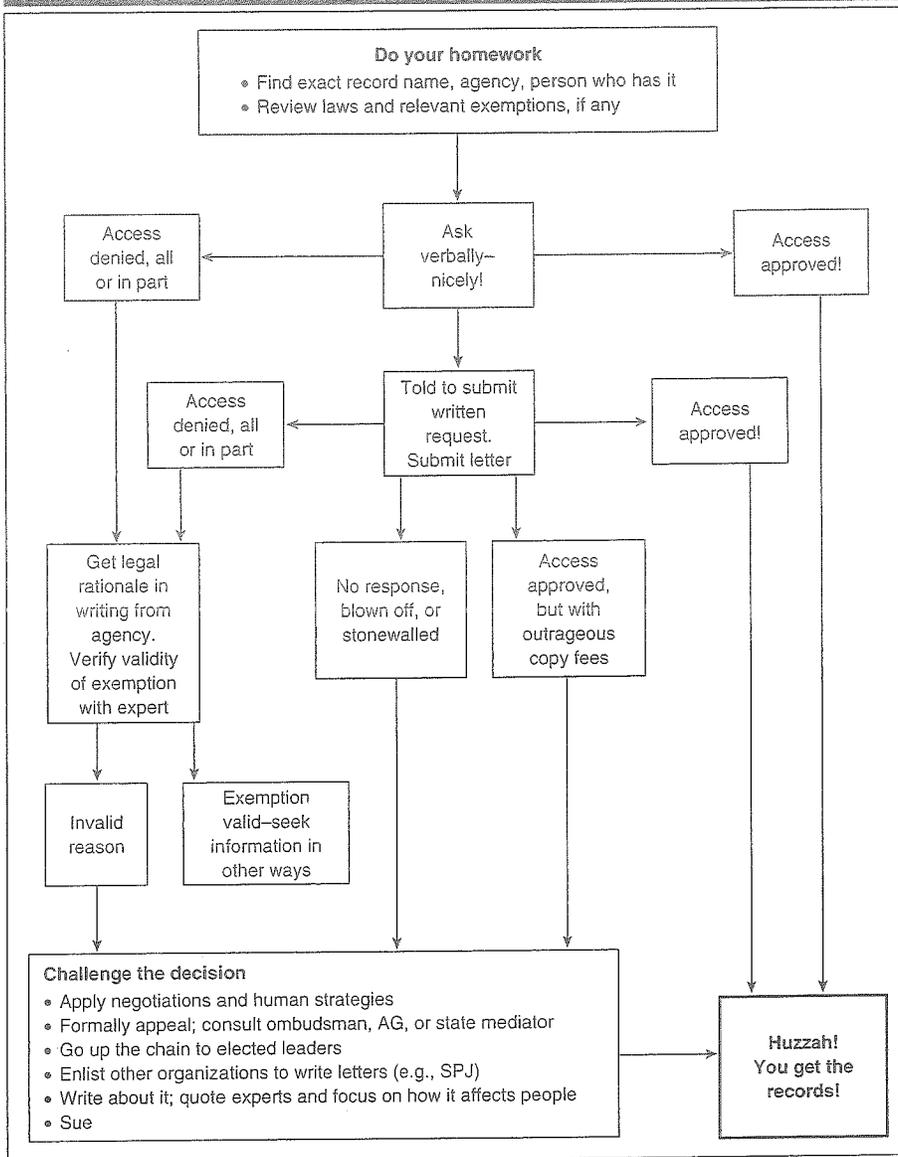
You should be able to call or walk into an agency and just ask to see the documents, and often you can. Ask and you shall receive. But sometimes it isn’t that easy. Sometimes *how* you request the information will determine whether you get it, or at least whether you get it in a timely fashion. It shouldn’t be that way, but that is reality.

This chapter provides practical tips for effective public records requests, including preparatory steps, comparison of good and bad request letters and practical psychological strategies for dealing with your fellow humans.

Do your homework

It pays to do a lot of work before asking for a document. It will save you—and the agency—time in the end. We suggest you walk through a series of steps in preparation of your request (see Figure 5.1).

FIGURE 5.1 Public records request flow chart



Get the name of the record and location

Your first task is to find out exactly what record you need, who has it and where the record is kept. A specific request is a good request. That requires reconnaissance.

Eric Nalder, senior enterprise reporter for Hearst Newspapers, tries to talk to government employees before requesting records so he knows exactly what to ask for, even on quick-hit stories. For example, in 1999 he got a tip that Washington state's ferries didn't have enough lifeboats to handle all their passengers. Only one in seven people could get in a lifeboat if a ferry sank—the rest likely would drown. An employee said the state keeps records showing lifeboat capacity.

"He said they're at headquarters," Nalder said. He continued:

I asked where at headquarters, and he said in the general manager's office. I asked where in the office and he said in a gray file cabinet next to his desk. I asked which drawer—he said the top one. I asked where in the drawer and he said he thought it was toward the front. When I called the public information officer I asked for the records and she said she would check around and get back to me. I said, "Don't worry, the certificates of inspection are in a gray cabinet in the general manager's office in the top drawer near the front, and I'll come down and pick them up." I picked them up at 2 p.m. that day.

Ask verbally first

Once you've identified what you want and know where to get it, simply ask for the records politely, preferably in person. Avoid e-mail or the phone unless you absolutely can't. It's much easier to deny someone via e-mail than in person. It's about people skills. "You can't just walk into a building and tout freedom of the press," said Marley Shebala, a longtime reporter for the *Navajo Times*. "It's just not going to work. You have to develop relationships."

Shebala has been a tribal journalist for more than two decades. As sovereign nations, tribal governments are not subject to state or federal public records laws.¹ She can't rely on the law, so she has to use people skills. For reporters covering nontribal governments, the same skills apply.

"If you know the clerk you can get records," she said. In the Navajo Nation, police records are mostly public—at least the ones the officers

want to release. Budget information can take a couple of weeks to get. The “discretionary” slush fund for the Navajo Nation president and council remains secret. Getting records is a challenge.

That means talking to people and asking for records in person, not by letter. We should note here, by the way, that Shebala is no pushover. Early in her career with a tribal radio station she was given a choice of getting in line with tribal government or being fired. She took the firing. But she came back stronger to work for the *Times*. Her muckraking brought down two tribal presidents, sending one to prison in 1989.

The lessons she’s learned can be applied on- or off-reservation, particularly in dealing with agencies in rural areas:

- Before asking for records, introduce yourself and share information about each other. The Navajo tradition is that when you first meet a person you explain your family origins, where you are from and what you are doing. That puts people at ease and gives them context and perspective.
- Show respect. “I was up at Mexican Hat, Utah, and I went way into this valley area with a medicine man and his wife,” she said. “I talked with them for a while and I asked if I could take their picture. You just don’t conduct yourself as if you have that right to freedom of information. There’s a certain respect you show people.”

When possible, developing relationships is a great way to smooth the way for records requests, in all cultures. With any luck, the custodian will hand you the records on the spot. If not, you might have to move to the next step—a written request.

Write effective letters

Sometimes you’ll ask for a public record verbally and you’ll get the records immediately, but sometimes you’ll be ignored or get the run-around, even when a verbal request legally constitutes a public records request in some states. If your verbal requests are ignored, or if the agency’s policies require a written request, then it’s time to submit a formal public records request.

A written request provides several benefits for you and the agency.

First, for most states and the federal government, a written request starts the clock ticking. Federal agencies are required to respond within 20 days of a written request. Some states require a response within three days; many states require a “prompt” request. By law, a written request is not supposed to be ignored. An agency must respond by providing the records, denying the request in whole or part by citing a legal exemption, or saying that more time is needed.

Second, a written request provides a paper trail and prevents miscommunication or bad memories in the future. If you send a certified letter you will have proof that an agency received it. A response to an e-mail request provides a trail.

Third, a written request forces you to put your thoughts down on paper, which can help you focus on what you want.

Also, a written request can be cc’d to others within an agency, such as elected officials or the state attorney general’s office. That can send a message that others will also be aware of the request.

The agency might ask you to fill out its own records request form. That’s OK—either way it initiates the same process, and it allows the agency clerk to show that he or she was required to give out the information because you submitted a formal request.

The form might ask you the purpose of the request—most state laws do not require the requester to identify how the records will be used with the exception of commercial use or mailing lists. Sometimes commercial users, such as marketers, pay higher fees. Lists are sometimes not allowed to be released for business uses, to prevent mass mailers from sending junk mail courtesy of government address lists. For federal requests, you can get a fee waiver if your purpose is for the public good, such as for journalism, so you would have to explain the purpose if you want a fee waiver.

Find sample request letters

When you sit down to write a letter, consider borrowing templates available widely online for federal requests or state public records requests.

Pro tip**Beware of 'telegraphing'**

In many cases, a specific FOIA request to a federal agency often speeds up the collection of information. However, be aware your FOIA might also tip an agency off to a story it doesn't want out. In a worst-case scenario, your FOIA may end up in the hands of an agency's public affairs office or a political appointee who may circle the wagons or launch a pre-emptive effort to undercut your reporting. A few days before *The Washington Post* published its high-profile expose about the serious problems at Walter Reed Army Medical Center in 2007, they called the Department of Defense (DOD) and asked for statistics and interviews on the record. As soon as DOD found out about the soon-to-be published article, the agency called a pre-emptive press conference and invited everyone except *The Washington Post*, doing as much damage control as possible before the story came out. Some reporters sending FOIAs may not fully realize how sophisticated some agencies have evolved at managing their image, including through FOIA. Some federal agencies will refuse to release records, some may release only favorable records and some may undermine your story. One way to get around this obstacle is to regularly request several types of information so it is more difficult for an agency to determine your target. Another way is to work with a nonprofit organization that will submit a FOIA and follow it up, a cost-saving idea in these tough economic times when news rooms are short staffed.

—Paul Sullivan, executive director, Veterans for Common Sense

Two organizations, the Student Press Law Center and the Reporters Committee for Freedom of the Press, provide nifty letter generators online, tailored to your particular state (see Figures 5.3 and 5.4 on pages 95 and 96). Simply go online and enter basic information into the boxes, such as the agency address, what you want, how much you're willing to pay in copies, and your name and address. Choose your state and click a button. Up pops a formal letter ready for you to copy and paste into a Word file.

Also, other suggested templates for request letters are provided by a variety of organizations, including state press associations, coalitions for open government, state attorney general offices and Society of Professional Journalists chapters. Most of the letters share similar elements that should be a part of every letter:

- Address it to a specific person that you know will be handling the request. Don't address it broadly, like "Peoria Police Department" or "City of Peoria."
- Be as specific as you can regarding what you want, naming the records, how far back you want them to go and the format in which you would like them (paper, electronic, etc.). You might explain different options for providing the records (mail, e-mail, pick up, CD, etc.).
- Cite the relevant public records statute.
- Address whether you want to just see the records (usually free) or want copies. If you want copies, designate how much you are willing to pay; if the agency says it will cost more than that amount, ask it to contact you before making the copies.
- Note the statutory deadline for responding to the request, or politely give a deadline for when you would like the records.
- Ask for expedited review or copy fee waivers because you are working in the public interest. This is allowed under federal FOIA, and similar provisions are allowed in some state laws.
- Note that denial or redactions should be justified by a statutory exemption in writing.
- Provide contact information, such as an e-mail address or phone number, and offer to assist or answer questions.
- Some people add relevant case law, an attorney general opinion or other legal support for making the records public.
- Some people use the terms "any and all" or "included but not limited to" to make sure they get everything. They then can narrow the request from there. Avoid making it too vague, though, or it might be unwieldy and open itself up for denial.

Choose your tone

You'll want to choose your tone for your letter, depending on the existing working relationship you have with the agency, what type of agency you're dealing with and how hostile the agency reacts to your initial verbal request.

We have seen three different tones of letters: friendly, threatening and neutral (see Figures 5.2, 5.3 and 5.4 on pages 94–96). When we ask

Pro tip**Make it obvious**

Every written public records request should clearly state that it is an official legal public records law request, in the text and in a header (“RE: Public records request” or “Subject: Sunshine Law Request”) so clerks do not dismiss it as an optional task or casual inquiry. In some states, such as Missouri, if a request does not state that it is a sunshine law request then the agency can legally ignore it.

—Jean Maneke, attorney for the Missouri Press Association

journalists and custodians which letter they think is most effective, usually most people say the friendly letter should be best. Makes sense; that’s what we’ve always thought too. But we weren’t sure, so we conducted two experiments.

In 2007 David Cuillier teamed with a college journalist who wanted to look at police use of force incidents in Arizona. Cuillier mailed out request letters to all 104 police agencies requesting the records. Half of the agencies, randomly selected, received the friendly letter (Figure 5.2) and half received the threatening letter (Figure 5.3).

Cuillier developed the friendly letter based on psychological principles of persuasion. It used subordinating language, such as “I know you are busy,” or phrases to foster liking, such as “I want to thank you in advance,” “I would very much appreciate a response by . . .” and “Thanks again for your help!”

The threatening letter, provided by the Student Press Law Center, began by quoting the FOI statute and ended with a reminder that non-compliance could result in litigation, fees, fines and paying attorney fees. The student journalist didn’t know which agency got which version of the letter—he just collected the records and dealt with the agencies after the request letters went out.

Which letter worked best? The threatening one. Only half the police agencies even responded to the friendly letter, while two-thirds responded to the threatening version. Only 4 percent of the police agencies that got the friendly letter actually provided the records,

FIGURE 5.7 Sample request letter: Friendly version

This letter is based on the principles of persuasion, intended to foster liking.

Sept. 2, 2010

Cactus School District
450 West 6th 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 be 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
[e-mail address]

FIGURE 5.3 Sample request letter: Legalistic, threatening version

This letter is based on the Student Press Law Center version, available at www.splc.org/foiletter.asp. You might remove the threatening paragraph toward the end.

Sept. 2, 2010

Cactus School District
450 West 6th 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
[e-mail address]

FIGURE 5.4 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.

Sept. 2, 2010

Cactus School District
450 West 6th 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
[e-mail address]

whereas 14 percent of those who got the threatening letter provided the records. The threatening letter also resulted in lower copy fees and faster response (nine days instead of 10).

A few months later Cuillier ran a similar experiment with school districts, asking for coaching and superintendent contracts of all 208 agencies in Arizona. He also added a third version in the mix—a neutral letter (the one put out by the Reporters Committee for Freedom of the Press, see Figure 5.4). Again, the threatening letter had the best response—74 percent instead of 50 percent for the friendly and neutral letters. The threatening letter also resulted in lower copy costs and faster turnaround. And agencies that got the threatening letter weren't rude or snippy about it.

So what's going on here? When looking closer at the data we noticed that a large chunk of the responses to the threatening letter came from attorneys and top officials. In other words, when clerks received the threatening letter they tended to automatically forward it to the powers that be. The attorneys would look at it and see that the information needed to be released, so it was released. Clerks who got the friendly letter tended not to take it seriously and were more likely to blow it off.

The lesson here is that it pays to highlight the law as a reminder that you are serious. You may or may not want to threaten litigation, but an authoritative letter certainly gets the job done in many cases.

Results may vary, and not every situation is the same. If you're coming in cold without a verbal request, a nonthreatening letter might be the way to go, and then work up from there. If you've had difficult times with the agency before and you know that only a club works, then bring out the club and remind the agency of penalties for noncompliance. Threaten to sue if you are prepared to do so and you think it is necessary. We find that smaller, more rural agencies tend to prefer a more friendly tone, although sometimes they are so busy and overworked they might ignore the letter anyway. Federal agencies are accustomed to the legalistic letters. The point is to give the letter a little thought and then send it out, following up to make sure the agency received it. Answer questions if they are unclear about what you are looking for. Now it's time to work with the agency, person to person.

'Get to yes' through principled negotiation

In our experiment, half the police departments and half the school districts didn't even acknowledge the written requests, violating state law. If our government officials, including the police, choose to break the law, what are we to do? Few people have the time or money to sue. And we'll talk more about how to handle denials in the next chapter. For now, it's worth looking at how we can use human tactics to achieve success with the initial request, and avoid denials and litigation later. Let's apply a little principled negotiation.

William Ury is an expert in principled negotiation, from family disputes to ethnic wars. He is a co-author of the bestseller "Getting to Yes,"² and co-founded Harvard's Program on Negotiation. Every requester should become fluent in the language of negotiation. These principles will help you build relationships with sources, which is important if you cover a beat, especially in a small town. We'll walk through some of Ury's key points, applying the principles of "Getting to Yes" to the art of accessing public records.

Argue interests, not positions

Make sure the agency knows what your *interest* is, not your *position*. Here's the difference. A position would be "I want you to give me record

Pro tip



Write your victory speech

Do a thought experiment, imagining that the public official says "yes" to your request and then has to explain to their superior or peers or whomever they report to why they said "yes." Imagine what criticism or questions they might receive: "You gave them that? How could you?" Then imagine the best response they can make. If you can't imagine them giving a little "speech" that persuasively demonstrates why it was in the agency's interest, then you may need to do some work. If you want them to say "yes" to your proposal, it is your job to make it easier for them to make this "victory speech."

—William Ury, co-founder of Harvard's Program on Negotiation and author of such books as *Getting to Yes* and *Getting Past No: Negotiating with Difficult People*

XYZ by Tuesday." An agency might have its own position: "I'm too busy to get it by then," or "There is confidential information in those records I don't want out." When two sides take positions they often lock themselves in, and then it becomes a contest of wills: "I want that record." "No, I won't give it to you."

Another common example is when two sides argue over details in the public records law: "I think that exemption 3b says it's public," which is countered by, "I read exemption 3b to mean it's secret, based on court case *Jones v. City of Burkburg*." Too often we argue over legal positions that go nowhere, or worse, lead to a lengthy and costly court battle.

Instead of taking a position, convey your *interest*. Your interest is that you want information that can help illuminate an issue important to the public. The clerks' interest is that they want to process paperwork efficiently without giving out information that will hurt someone. There are usually ways to provide that information while keeping private information secret (e.g., blotting out Social Security numbers with a pen). When you focus on your interests, then you can often work something out. Arguing over positions hurts ongoing relationships with sources, but negotiating interests builds relationships.

Separate people from the request

It's important not to make the request personal, which is really tough for some people. Officials might take your request personally and see you as the enemy. You might see them as the enemy. That's unnecessary. Avoid this potential pitfall through a variety of techniques:

1. Act inconsistent with officials' perceptions of you. Be nice, empathetic and sincere. From their perspective, that might seem odd for a journalist!
2. Put yourself in their shoes. Always try to understand where they are coming from. That's why we have a whole chapter on that subject (Chapter 8).
3. Allow face saving. Don't box an official in a corner. Allow several outs for the records to be provided without losing face. "I know you want to be transparent and that you aren't hiding anything. Maybe the attorneys can look at the law and see if the information is disclosable."

4. Allow officials to vent, and don't react to outbursts.
5. Listen first, then repeat what you heard. That shows that you are listening and open to their concerns. Acknowledge their interests: "I understand you don't want to let personal information get out. I don't either. Let's figure out a way to redact that information so we don't let anything out that shouldn't be released."
6. Use "I" statements, not "You" statements. For example, say, "I think these records will be of interest to your constituents," rather than "You need to give these out because your constituents will appreciate it."
7. Try to talk with people informally side by side, rather than face to face. Avoid talking to a clerk on one side of the counter with you directly facing from the other side. The physical configuration sets up subconscious psychological opposition.
8. Ultimately, be hard on the problem but soft on the people. Don't blame. Listen with respect, express appreciation. Be firm but open.

Use negotiation jujitsu

If officials play hardball and won't cooperate with your request, start a new game. If they attack, sidestep and deflect against the problem. Bend, like the flexible willow; don't break like the rigid oak. Here are some simple negotiating tips:

1. As you make your request, invite criticism and advice. Maybe a clerk will say the information won't be helpful to you. In that case, don't say, "I'll be the judge of that. Just hand it over, please." Instead, say, "I am interested in what you are saying. Why won't it be helpful? Are there other records that would be better to see?"
2. Use questions instead of statements. Statements of fact are threatening: "The law says you need to provide the information." Ask questions instead: "Can you show me where in the law it says that information is secret? I'm sorry, I must have missed it—which subsection would that be?"
3. Use silence after an unreasonable attack. Sheriff to you: "You ain't getting nuthin' because I'm the sheriff and I say so!" Let that statement sit there in silence. The official will often realize what was just

- said, see that you aren't going to escalate the confrontation, and then cool down. It also gives you time to take a deep breath, compose yourself and not get angry.
4. Make yourself open to correction and persuasion: "Maybe I'm not understanding what is contained in the records—can you please explain to me what is in them, or better yet, show me an example of one so I can make sure I have this straight?"
 5. Don't decide on the spot. If you request a record and the custodian says "no," don't argue, especially if you feel your hackles going up. Take notes on what the person says and respond: "I need to do some more homework to make sure I understand this. Let me get back to you."
 6. End the conversation with a sincere compliment, no matter how it resolved: "I know you're busy and I thank you for your time. You folks don't get paid enough!"
 7. If agencies use dirty tricks, call them on it. Raise the issue and question it, focusing on the action, not the person. Don't seek to teach a lesson.
 8. Invent different options. Rarely is there just one record that you need. When you are requesting records, be open to the idea that there may be many different records that can satisfy your interest. Brainstorm solutions with colleagues and offer to brainstorm solutions with the agency over coffee. Make their decision easy by highlighting what they would get out of it.

Apply hard tactics if necessary

Sometimes some people just don't want to work through principled negotiation. In that case, we turn to the "dark side." Robert B. Cialdini, a psychology researcher from Arizona State University, has identified what he calls "weapons of influence."³ The psychological techniques are used by advertisers, marketers, public relations professionals and government strategists to influence the public—and journalists. Sometimes you have to fight back.

But before we get into these methods of persuasion, a word of warning is in order: Use these powers for good, not for evil. The intent here is not

to “manipulate” people as if they are lab rats or consumers. Some of these principles are touted in books on “covert persuasion,” the goal of tricking people without them knowing. Trickery is unethical in journalism.

The idea is to realize that the act of requesting records involves human interaction, where decisions are often arbitrary despite the law. Every day we act certain ways around others to get them to do stuff for us, even if it is just smiling and exchanging pleasantries. Is saying “Hi, how are you doing?” trickery? No. We say that because we want people to treat us well, not spit on us. That is the same idea here. We must understand the human elements of interaction between requester and custodian.

Below, we adapted Cialdini’s weapons of influence and other principles of social psychology for getting public records. Always be honest, always be forthcoming and never lie. Wield these principles ethically for the public’s good.

Reactance

The idea behind reactance theory is people will resist being forced into a decision. Research shows that if you push people to act a certain way they will resist and act the opposite—that’s where we get the concept of reverse psychology.

If you tell a custodian that he or she must do what you say and fulfill your request, then their natural reaction will be to resist. Avoid telling the person that he or she is wrong and boxing them into a have-to situation. Affirm the other person’s view. First acknowledge the person’s concern or position, then explain yours. This is consistent with principled negotiation jujitsu, but sometimes you have to be more overt and calculated about it.

Reciprocation

When you give something to someone, that person feels obliged to reciprocate, often beyond the value of what you gave. That’s why businesses offer free samples.

Now, we don’t advocate that journalists buy off government officials, or even imply quid pro quo. We do, however, see how this psychological technique can be applied ethically.

For example, a reciprocation-based technique is the “rejection-then-retreat” tactic: Ask for a lot, and then cut it in half. “Can I see all documents you have regarding the budget for the past 20 years?” The clerk’s jaw drops, thinking about the amount of time that is going to take. “OK,” you say. “How about starting with just the expense reports for the past five years?” You are giving up something, so the clerk feels compelled to reciprocate by saying “yes.”

In using this technique, we suggest you don’t arbitrarily choose a huge amount of records just to be manipulative. As we’ve mentioned before, the best records requests are those that are specific and focused. If you ask for a large amount of information, perhaps to legitimately examine a broad issue, you should actually want to see all those budget records for the past 20 years. That can demonstrate trends. Also, it might be very easy for the agency to provide that material—stored electronically in Excel files that can be copied and pasted to an e-mail in an hour. It’s just that you are prepared to accept less, and know that less will serve what you need if the agency is unable to provide you with your heart’s desire. If you start big and give something up the gesture is appreciated and the person might be more likely to help you out.

Another application of the reciprocation principle is to offer to help the custodian as much as possible with the request. Volunteer to help make photocopies, or bring your own photocopy machine. While the custodian might not take you up on it, the good-faith gesture will be appreciated; he or she might even reciprocate by going beyond the minimum legal requirements to help you out.

Commitment and consistency

Once people commit to something, they try to stick with it. Psychologists find that people have a difficult time acting inconsistently. This is the opposite of the “rejection-then-retreat” technique: Once someone has agreed to a small request, get a commitment for something bigger. Once they say “yes” it is more difficult for them to say “no.”

Retail sales people use this technique all the time asking the simple question, “How are you today?” Most people automatically respond by acknowledging the question and affirming the person: “I’m great, thanks,”

even if they don't feel great. Once a person has gone along with one request it is more difficult to say "no" to the next question.

Here's how it might apply to records: "Could I see what a police report looks like? Great. Can I see what a case file looks like? Thanks! Ummmm, what does it look like in your computer system? Nifty. Any chance I could get an electronic copy of reports in Excel for the past year? Shoot, it appears you have all the data for the past 10 years. How about copying that too?"

Another use of the commitment principle is to discuss with the custodian the terms of the request and finish with, "Do we have an agreement?" or "Does this sound like something that will work for you?" Once agreed upon it is more difficult psychologically for a person to reverse a decision later.

Rob O'Dell, City Hall reporter for the *Arizona Daily Star*, uses this technique a lot on his beat. He routinely asks the city of Tucson for records, and officials get used to being asked. When he is working on deadline he gets what he needs quickly, without much hassle. For example, he requested e-mails among high-ranking officials and they printed out each one and gave it to him. "It's impossible to look through 1,200 sheets of paper to find what you are looking for," he said. So he wrangled with them and eventually got them to provide e-mails on a CD. "Then they told me that they don't have to do that every time, but I got them to do it the next five times." Then a controversy erupted where he knew he would need to see e-mails. "I told them that they should be able to provide them on a CD since they had done that previously. If I wouldn't have done that I wouldn't have gotten the e-mails in a timely manner."

Also, O'Dell said, if you routinely request records about less threatening information, the agency will get used to you and be less skittish when you put in a request for something controversial. "They'll be used to you and say, 'Oh, it's just another records request from this guy.'"

Social proof

People are social animals who like to run with the pack. Peer pressure works. "Boy, all the other towns in the county provide this information. I wonder why it isn't open here?" Put together a list of agencies in your

state or in the country that provide the information. What official wants to appear abnormal or deviant?

The principle of social proof is most effective when people are uncertain, so if they are not sure whether the information should be open they will often follow what other officials do.

Another example of social proof is playing up the patriotic duty of open government and the importance of the information to the community. Convey the idea that it's their duty as Americans to keep government open and free, and that their neighbors will appreciate their efforts.

Building on this thought, it is crucial during the request process for journalists to convey that the information is of interest to the whole community, not just the one reporter. It's easy for a custodian to say "no" to one annoying reporter; it's more difficult to say "no" to the 300,000 people living in the community. Talk about how city residents will appreciate seeing the information in the newspaper or online. Make it clear that if they say no you will put that in your story, and the agency will have to answer to its constituents, not one media organization.

Liking

As much as we hate to admit it, people often make decisions based on how a requester looks. We see this time and time again in access audits, where records are denied to some requesters because they look "shady" or "disheveled." Appearing sneaky raises suspicions and increases denials.

Therefore, dress and act like your sources. Talk about similar interests. Research indicates that when people perceive similarities with others, such as the same birthday, they are more likely to approve of them.

Offer sincere compliments. Disassociate yourself from people perceived to use information irresponsibly (e.g., spammers, tabloids or identity thieves).

Some psychologists suggest that you go to lunch with someone and have a pleasant, nonthreatening conversation so that the person associates good things with you. They call this "classical conditioning" (remember Pavlov's experiments?). Pick a nice restaurant that the person likes, and pay separately to avoid a conflict of interest. Psychologically, the person will associate good things (e.g., cheeseburger) with you, rather than bad things (e.g., photocopying records).

Pro tip**Deliver joy and goodwill**

To build relationships with sources, send holiday cards thanking them for their assistance. Also send thank-you letters, cc'ing to their bosses, about how helpful they were. I keep my naughty list and my nice list, and I mail them all cards. I think they appreciate it and it helps with future requests, even with the people who are difficult.

—Jaimi Dowdell, training director,
Investigative Reporters and Editors

Again, we don't want to perceive people as lab rats to be manipulated. It's just one of those functions of human interaction. Journalists, business associates and others do this routinely because they find it works—people will talk to them more. But we doubt they head out of the office saying they have to do some classical conditioning. We just don't usually consciously think of it in those terms. If you go to lunch often enough with custodians, then every time you approach the counter the clerks will start to salivate, as will you!

Scarcity

Advertisers play on fear by saying their sales are available “for a limited time only.” Likewise, make your request urgent and officials' response time limited: “I don't have time to wait until next week for you to check with the city attorney on this. My deadline is in six hours. I'm going to have to write a story for tomorrow morning's paper explaining that your agency is being secretive. And darn it, I would hate for you to look like you are hiding something when I know you aren't.”

These techniques might not work every time, but like any reporting tool, they can improve your odds of getting the information you need, when you need it. Of course, use this only if you truly are on deadline and in a hurry. The custodians deserve to know that, as well as what might show up in the next day's paper.

Authority

Authority can increase compliance. If you work for a small company, team with reporters from larger organizations. Cooperative requests increase pressure for release and serve everyone's interests. However, it might depend on the public official: Big-city media sometimes have it tougher in small burghs.

Titles convey authority. Have the request letter co-signed by the editor-in-chief or publisher. Government allies, such as the attorney general, can help.

Referring to the actual statute numbers of the public records law or FOIA conveys authority, increasing compliance with public records request letters. Writing "Public Records Request" on the top of your letter also amplifies the importance of the matter.

Also, research has found that authority symbols, such as clothing, height, maleness and nice cars, increase persuasiveness. Unfortunately, that is something out of most journalists' control, unless the publisher is open to buying a company Porsche in the name of FOI.

Choosing soft vs. hard

Now, let's say you were pleasant and reasonable with an agency and have a legal right to the information (and triple-checked with legal experts), and the agency still balks. When do you use soft tactics and when hard tactics? That's something you'll have to figure out through practice, and it depends on the circumstances. But here are a few thoughts.

We believe it's important to first apply the "Getting to Yes" ideals of principled negotiation and avoid needless confrontation. That doesn't mean coddling or backing down, but rather finding solutions that meet everyone's needs.

"The good thing is for them to see you as principled and fair," said Michael Jonathan Grinfeld, an associate professor at the University of Missouri School of Journalism and co-director of the Center for the Study of Conflict Law and the Media. "You want them to see you as a smart and good person who wants to make things better for the community."

Pro tip



Mark your calendar

When you send a records request, mark on your calendar or use Google Calendar or another electronic system to check back in a week so you don't forget. I called back 10 days after I requested water line inspection records and the official said, "I thought you didn't need the information anymore." Officials will try to take advantage of when we forget about requests.

—Yang Wang, reporter for KHOU-TV
Channel 11, Houston, Texas

Grinfeld suggests people avoid the hard tactics if they can because they will lead to mistrust. But if principled negotiation doesn't work, then journalists have an obligation to acquire the information for the public. "I'm not against hard tactics, but it's a last-ditch effort," he says. "If they use hard tactics on you then you use them. You don't have to get mad. Just move step by step. The natural thing is to flip someone off, but you have to work at it. Manage your emotions, and move forward with greater resolve."

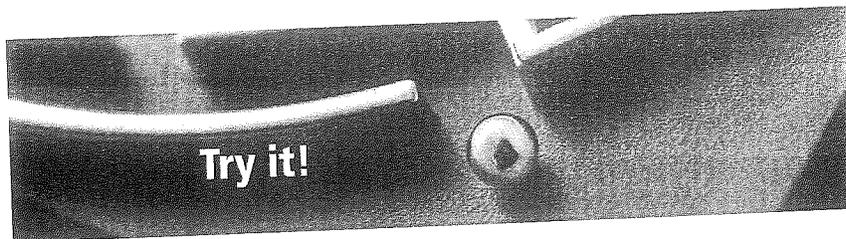
Psychological research indicates that authority wins over liking, so if the liking doesn't work it might be time to break out the big stick. If you can't afford to sue, then you might have to apply more heavy-handed tactics to convince custodians it's in their best interest to follow the law.

Mike McGraw, special projects reporter at *The Kansas City Star*, says that sometimes a journalist must pummel an agency into submission. Harsh? Maybe. Will custodians cringe at the suggestion? Sure. But sometimes, with those few officials who knowingly violate the spirit and letter of the law, it's the only option.

For example, McGraw had asked a public university—one that was across the country—for a document that outlined how much funding was provided to women's and men's sports, showing favoritism toward men's sports. The university could have mailed it, and McGraw was willing to pay for expenses. But the university didn't like his request because it might have made the university look bad, so officials told him he would

have to fly across the country to get the records. Instead, McGraw called the university's campus newspaper, told reporters about the document and story idea and asked them to mail a copy of the report once they finished their story. After the campus newspaper and *The Kansas City Star* both published their stories, McGraw called the university public information officer back and said, "Now you have two negative stories about you. So there."

We hope the tips provided in this chapter will prevent you from having to punish an agency, or flip someone off. But the reality is some agencies, like McGraw's university, will give you a tough time and deny a valid public records request. For that, in the next chapter we will talk about how to deal with denials.



Exercises and ideas for journalists, newsrooms and classrooms to improve your skills and foster FOI in your community.

1. Create letter templates

Go to the Reporters Committee for Freedom of the Press (RCFP) online letter generator (www.rcfp.org/foialetter/index.php) and the Student Press Law Center letter generator (www.splc.org/foiletter.asp), and create different versions of public records request letters. At the RCFP Web site create a federal FOIA letter and a separate state public records request letter. Copy and paste the letters into Word files and keep them handy for when you might need them, along with your own tailor-made letters based on the letters discussed in this chapter. Figure out what tone you like best and then set aside two separate letters—one for federal FOIA requests and one for state/local requests. Photocopy the forms and carry them with you to fill out on assignment at meetings or at agency offices. Make them available to your classmates or co-workers.

2. Build a request kit

When you are on the beat covering agencies and you are in a document state of mind, you will begin to request records on the fly—when a source at City Hall mentions a report, or a school board member refers to an audit during a board meeting. In those cases you need to be ready to submit a public records request immediately. Prepare a packet to have with you at all times, or at least while you're at government agencies and meetings. Put the following items in a folder to bring with you:

- ☑ **Blank public records request forms.** If an agency you cover has its own forms it prefers people to fill out, bring copies of those forms.
- ☑ **Thumb drive or flash drive, and a blank CD.** So a clerk can transfer electronic files for you.
- ☑ **Camera or portable handheld scanner.** To capture images of documents at the agency rather than paying for copies.
- ☑ **Copy of your state public records law.** Go to www.rcfp.org/ogg and click on your state. On the left is a link to your state statute. Copy it to a Word file and reduce the font, then print it out.
- ☑ **Summary of supportive case law.** In that RCFP guide at www.rcfp.org/ogg you'll find explanations by an attorney about each element of the law and case law supporting openness. Create a one-page sheet of paper that lists key elements and the cases that support openness. For example, maybe a court case in your state ruled that electronic records are subject to the public records law. Be able to cite the case.

3. Learn how to understand others

Hone your people skills by checking out books that will improve your ability to work out disputes with others. These skills can help you in your working and personal relationships as well. Take notes as you read them and boil down the tips for your co-workers or fellow students. Here are some good books to read:

- ☑ Babcock, Linda, and Sara Laschever. *Women Don't Ask: The High Cost of Avoiding Negotiation—and Positive Strategies for Change*. New York: Bantam, 2007.
- ☑ Cialdini, Robert B. *Influence: Science and Practice*. Needham Heights, Mass.: Allyn and Bacon, 2001.

- ☑ Fisher, Roger, William Ury and Bruce Patton. *Getting to Yes: Negotiating Agreement Without Giving In*. New York: Penguin Books, 1991.
- ☑ Mnookin, Robert H., Scott R. Peppet and Andrew S. Tulumello. *Beyond Winning: Negotiating to Create Value in Deals and Disputes*. Cambridge, Mass.: Belknap Press, 2000.
- ☑ Stone, Douglas, Bruce Patton, Sheila Heen and Roger Fisher. *Difficult Conversations: How to Discuss What Matters Most*. New York: Penguin Books, 2000.

4. Record yourself

We rarely know how we interact with others because we can see only from our own vantage point. So record yourself asking for records. If a clerk is willing to be recorded while you ask for records, great, but it's probably likely that they won't want to be recorded or would act unnaturally. So practice with a colleague or student. Simulate a records request, using an audio recorder or video recorder to capture the exchange. Examine how you act. Note whether you use "I" statements or "You" statements. Go down the list of negotiation principles presented in this chapter and see if you are following them. Note how you can improve, write it on a piece of paper and keep it with you to practice when you are interacting with sources and requesting records. This is also a good technique for improving your interviewing techniques.

5. Host a soda session

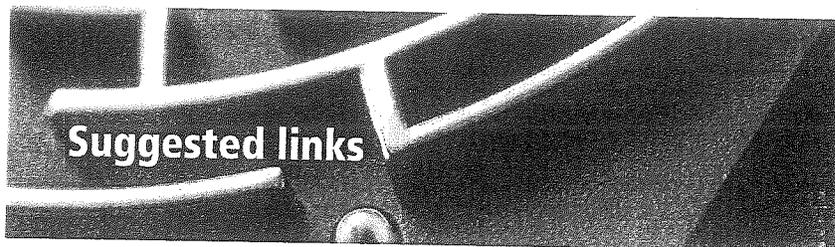
Some of the best resources for FOI strategies and records ideas are in the neighboring cubicles. Get your co-workers or classmates together for cookies and soda, and share public records ideas and request strategies. It's amazing what we can learn about our communities simply from our colleagues. Come up with two document-based story ideas and one new strategy for each person.

6. Practice psychology for real

It's one thing to read about psychology and persuasion, and it's another to try it out and see it work in practice. Test out some of these simple persuasion principles and see if they work:

- ☑ **Authority.** All week go to class or work wearing nice clothes—more formal than the situation calls for. Note how people treat you. The next week wear grubby clothes—less formal than the situation calls for. Note how people treat you then.
- ☑ **Reactance.** One day tell your friend what to do: “You need to drive me to the mini-mart for a soda.” A week later, try the same task, but phrased differently: “I guess I don’t have a way to get to the mini-mart for a soda today . . . hmmm. I wonder how I can get there?” See how your friend responds. Discuss it with your friend.
- ☑ **Liking.** For one week make an effort to smile and give people sincere compliments. Note how they respond and treat you. Then in another week make an effort not to smile and not give compliments. Any difference in how you are treated?

Think of other ways to test these psychological principles. Take good notes, and then tell the other person what you did so you can both learn. If anything, this will arm you with the knowledge to defend yourself from marketers, advertisers and manipulative acquaintances who may try to use these tactics on you. These aren’t guaranteed to work every time—humans are not machines. But see if they tend to work most of the time. Above all, don’t seek to manipulate. Seek to be a good person. People like that.



Federal FOIA letter generator www.rcfp.org/foialetter/index.php

Use this site by the Reporters Committee for Freedom of the Press to create a simple federal FOIA request letter online. It’s simple and quick.

State public records request letter www.splc.org/foiletter.asp

For a state public records request letter, tailored to your state, use this online letter by the Student Press Law Center.

Strategies from everyone <http://wikifoia.pbworks.com/How-To-Guide>

WikiFOIA provides a spot for anyone to provide their suggestions for requesting records.

Tips for effective letters www.rcfp.org/fogg/index.php?i=pt1#b

The Reporters Committee for Freedom of the Press provides tips for effective letters.