

Module 8



Get Public Records and Freedom of Information Documents

Public records are the kind of evidence that can stand up in a court of law. And like a box o' chocolates, you never know what you're gonna get.

Guide for Requesting Public Documents

Goals:

Get provable documentation to find out what's really going on. Anything that's on paper or e-mail at a government agency is fair game, with a small handful of exceptions. You can't use public records request to ask a question, but you can use them to ask for documents. All you have to do is try to imagine what documents might contain answers to your questions, and request those records. It is the legal obligation of governmental agencies to provide the documents you request.

How to Ask For Public Documents

- Label your request "Public Records Request" if you are requesting it from a state or local governmental entity, or "Freedom of Information Act Request" if you are requesting it from a federal governmental entity.
- Make sure to date it and provide an address for them to send responses.
- You cannot request a record before it exists. To request election audit logs, for example, you need to wait until the election events have taken place.

- Once you have requested a record, it is illegal to destroy it. If you think you might need a time-sensitive record but you aren't sure, request it as soon as possible and ask that they quote you a price for it. You can always decide not to purchase it.
- Ask for a document, and be as specific as you can when describing it. You can't ask them to tell you information, instead you must request a record. For example: "Final, executed contract between vendor and Secretary of State's Office."
- In most locations, you can do public records requests by e-mail. An exception is Arizona, which requires you to fill out a form, which you can obtain from the Secretary of State's Web site.
- In most locations, you can request records and they must give them to you even if you don't live there. Exceptions include the state of Tennessee, which requires residency.
- The simplest thing to do is to just ask – if there is a rule against sending you the records for some reason, they will write to tell you that.
- Most states have a statutory deadline for responses to your requests. Usually, you will get a response within three weeks, sometimes within a day, if you sent it by e-mail. An exception is the state of Maryland, which can take up to 30 days to respond to you.
- You will usually be informed of an estimated charge for the records, in which case you can opt to quit or go on. Charges are regulated, but vary widely from state to state. Usually the charges involve only minor copying fees. Sometimes they tack on a labor charge, around \$20 per hour. Just ask them to quote you the price before filling the request. The most exorbitant fees we've seen are from the state of Michigan, which once quoted us a fee of \$125,000 just to look for some records. Obviously, you do not have to accept the fee if it is extravagant.
- You can find the public records laws for your state here: www.foiadvocates.com/records.html. We recommend that you just try making a request without spending a lot of time studying up on it. The laws will be something you will want to refer to if you are turned down on your request, or if they quote a price that is too high.
- Citizens doing public records requests for the first time often take an adversarial approach, believing they must show assertiveness. In fact, all governmental agencies are quite used to filling records requests, and there is no reason to be aggressive.
- Requesting public documents is not hard, and even imperfect requests are usually processed.
- Avoid the temptation to ask for everything but the kitchen sink. Be as specific as possible, and limit your request to a few items at a time.

Tips for getting the records you want:

- Put a date limitation on the records. For example, request "All correspondence, electronic or otherwise, to or from Inspector G. Gadget between the dates of January 1, 2004 and April 30, 2004."
- Many states will refuse to fill records requests they consider to be "too broad" or "overly burdensome" so resist the temptation to ask for things like "all correspondence for the last 10 years from all elections directors." Put tighter qualifications on your requests.
- Consider submitting a separate request for each item you request. Sometimes, a public agency will send a reply that is not informative, saying your request is "too vague" or "too broad." If you asked for 10 items on one request, all 10 can be derailed if officials object to one item. If you send separate requests, only the item the official objects to can be derailed. Also, some states like Washington and Colorado have punitive damages for wrongfully withholding records. This can be assigned per records request. If you have submitted separate requests, those charges will accumulate faster.

Another way to skin this cat is to choose to ask for several items on one request, but use language that severs one request from the next, like this:

"This document creates 12 distinct open records request numbered 1a, 1b, 1c, 1d, 2a, 2b,2c,2d, 3a,3b,3c, and 3d. These request are severable and are only included in a single document for administrative simplicity and thematic similarity. It is understood the delay or denial regarding the production records for one request will not affect or delay the production of records covered by a different request."

The point is, you want 12 distinct open records requests -- 12 separate correspondences asking for one thing each or one correspondence asking for 12 things, with severable language.

- It is courteous to acknowledge receipt of records which satisfy one of your requests, but be sure you indicate which is satisfied and which is not, like this:

I just received a package of records today related to my open record requests on <date> Records for record requests 1a, 2a and 3a have been fulfilled. I am still awaiting production on record for requests 1b, 1c, 2b, 2c, 3b, and 3c. Thank you for your time and diligence on this matter.

Refer to the requests, plural.

- Also if you speak on the phone or in person get it in writing. Either have them put their words in writing (e.g. Can you put that in writing and mail it to me?) or write back an email/letter which states: "From our phone call (meeting) this afternoon it is my understanding that <fill in the blank> is this correct?"
- The government does not have to send you records that contain security-sensitive information. If you believe your request might tread on that area, ask anyway and add

that, in the event portions of the request invoke security exceptions, the appropriate items – and only those items -- be redacted.

- Your requests can be denied if they request personal information, such as the home address of your local policeman.

When you request sensitive items that someone might not want you to have

- If possible, have evidence ahead of time that the document exists before you ask for it and be prepared to get stonewalled and/or that the document may disappear.
- Don't shine a spotlight on what you really want. For example, if you want to know whether Dirty Harry was a paid contractor for the elections division, you might want to request "the list of approved vendors and contractors for the elections division" or "all disbursements by the elections division between the time period of June 1, 2006 and July 31, 2006."
- You may find more cooperation on sensitive matters from another division that has the same set of records. It is generally advised that if you are making finance or purchasing-related records requests for an elections division, that you go to the accounting division to make the request.
- Try to have others working with you who can either make appropriate related requests before, at the same time, or after you to help make your case.

Elections records to ask for:

- Some of the most interesting records you can request are copies of all "trouble slips," reports, telephone notes, poll worker notes and service notes pertaining to any anomalies or problems in a specific election. Request these promptly.
- Zero tapes and poll tapes, date and time stamped, from the location you are auditing
- "Statement of votes cast" or "Detail report" for final election results (which breaks the results out precinct by precinct).
- Modem logs
- Audit logs: Beginning date three months prior to the election, ending date two weeks after the election is certified.
- Windows event log
- Assignment sheets and locations including:
 - The list of polling places and precincts for the Nov. 7, 2006 election.
 - The poll worker assignment sheet for the Nov. 7, 2006 election.
 - The voting machine assignment log (identifying which voting machines were assigned to which locations) for the Nov. 7, 2006 election.

- Authorized observer assignments for each polling place. Name of any political party observers and/or general public or civic group observers assigned to each location.
- All access logs of any person having access to the central tabulator.
- All "change logs" indicating changes, updates, deletions, or security programs added to your voting system dating back to _____ to _____.

Examples of public records requests:

You can see dozens of examples along with many of the responses to the requests here:
<http://www.bbvforums.org/forums/messages/2197/10455.html>

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Your Own Additions to the Public Records and Freedom of Information Module

You can share your ideas by sending to crew@blackboxvoting.org



What worked well?

What new ideas did you come up with?

Was there anything that didn't work very well?
