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# FORECASTING FREEDOM OF INFORMATION

**Why it faces problems—and how  
experts say they could be solved**

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# INTRODUCTION

People must have access to reliable public information to make informed decisions and hold their elected officials accountable. Without transparent government at all levels—local, state and federal—representative democracy is threatened. For a generation, presidents of both parties have in different ways tightened controls on government information. “The natural progress of things,” Thomas Jefferson once wrote, “is for liberty to yield, and government to gain ground.”<sup>1</sup>

The [John S. and James L. Knight Foundation](#) commissioned this study to better understand the landscape involving public access to government records by gathering information and insights from 336 freedom of information experts—journalists, advocates, record custodians, technology companies, scholars and others. In all, from December 2016 through January 2017, 108 experts were interviewed and 228 surveyed online. The study is not representative of journalists or society as a whole, but rather a cross section of those who deal with public record laws routinely. They are the active members, and in some cases the leaders, of America’s freedom of information community.

Freedom of information is not decided only in Washington, D.C. All levels of government are involved, bringing into view a diversity of government officials. Our objective was to canvass experts to identify barriers to information access and possible solutions, looking broadly at the law, public education, networking and new technology.

We found dissatisfaction, uncertainty and worry.

## Key points:

1. **MANY EXPERTS SAY ACCESS IS WORSE TODAY COMPARED WITH FOUR YEARS AGO:** About half of the 228 experts surveyed online reported that access to state and local records has gotten worse during the past four years (41 percent said it stayed the same, and 13 percent said it has gotten better<sup>2</sup>), and 41 percent said *access to federal records has worsened*. “What I hear from reporters in Washington and my students is that exemptions are being used in way too many cases and delays are still very long,” said Leonard Downie, former Washington Post executive editor and current Weil Family Professor of Journalism at [Arizona State University’s Walter Cronkite School of Journalism and Mass Communication](#). “I hope the door doesn’t get shut tighter.”
2. **NEARLY 4 IN 10 SEE A RISE IN DENIALS:** Though most respondents (57 percent) said denials have stayed the same during the past four years, 38 percent said they have been *denied records* at any level of government more frequently, and only 6 percent said denials have decreased. Rising



denials are particularly acute at the local level, where news organizations have cut some 20,000 journalists since the 2007-09 recession. Timothy Bolger, managing editor of the independent online [Long Island Press](#), said he did not realize the extent of the problem until he conducted an FOI audit of nearly 200 municipalities on Long Island, N.Y., in 2016. “This past year has really opened my eyes. There’s a good number of agencies that just don’t follow the law. I hadn’t paid that much attention before, but *I didn’t realize how much of it was an epidemic.*”<sup>3</sup>

- 3. OVERWHELMINGLY, EXPERTS PREDICTED THAT ACCESS WILL GET WORSE:** Nearly 9 out of 10 predicted that access to government will worsen because of the new presidential administration. “*I think it’s going to be a backyard brawl,*” said Ted Bridis, investigations editor for The Associated Press in Washington, D.C. Over the past several months, nonprofit organizations [scrambled to save data purged from federal websites](#) and listed the many [restrictions placed on communications with the public](#).

This report lays out problems with freedom of information and synthesizes solutions aimed at making freedom of information laws work as their creators intended—as an open, honest way for the public to know what its government is doing.



# CONTEXT

A well-informed community, one that can determine and act on its true interests, is essential to a well-functioning representative democracy.<sup>4</sup> Freedom of information laws throughout the country **clearly state** the importance of deferring to openness and strictly limiting secrecy.<sup>5</sup> We know open-record and open-meeting laws benefit society.<sup>6</sup> For decades, journalists and social justice groups have revealed extraordinary stories through freedom of information laws.<sup>7</sup>

Some federal agencies have made strides toward improving their systems.<sup>8</sup> Government officials are posting more data online proactively than in previous years, and thousands of record custodians, journalists and activists work daily to connect citizens with information about their government. Amendments to the federal Freedom of Information Act, the latest in 2016, have offered improvements.<sup>9</sup> If the new mandates of the law are fully funded, federal freedom of information would indeed be faster, cheaper and better. “The progress being made in some agencies and the government as a whole, especially in regard to technology, is better,” said Kevin Goldberg, counsel for the American Society of News Editors. “I am a little worried for the next four years.”

A growing body of evidence indicates that all levels of government in the United States are becoming more secretive and controlling of information.<sup>10</sup> Experts believe the body of public information is growing faster than the government’s willingness or ability to release it. Agencies are using exemptions more liberally to hide information. Journalists say it is getting more difficult to get information from the federal government, even in just asking for facts from government employees.<sup>11</sup> Community journalists are hard hit.<sup>12</sup> Reporters have become so frustrated that more than 50 journalism organizations sent a letter to the Obama White House in 2015 urging a stop to the excessive secrecy.<sup>13</sup> A delegation met with White House staff to discuss the problem but saw no action.<sup>14</sup>

On paper, public record laws in the United States are weaker than those of most other nations and continue to fall further behind. In an international ranking of the world’s 111 national freedom of information laws, U.S. FOIA rates 57th, behind such countries as Uganda, Kyrgyzstan and Russia (Mexico’s law is rated No. 1).<sup>15</sup> Access to information in the United States remains fraught with the same problems noted more than 50 years ago, before the U.S. FOIA was passed in 1966.<sup>16</sup>

To make matters worse, public record laws are not worth anything if a nation’s leaders have the power to decide a law does not mean what it says. In interviews with 60 journalists in Albania, Kosovo and Montenegro, Lindita Camaj, an assistant professor at the University of Houston, found that agencies have used freedom of information statutes to justify delaying or ignoring requests and to target critical media and give favorable media



preferential treatment. “This research suggests that governments can use FOI laws to punish, intimidate, manipulate news media, and control the news agenda—turning the FOI concept on its head.”<sup>17</sup>

Laws that do work can become targets. “Every year for the past five years we’ve had a massive onslaught of efforts to gut the law,” said Michele Earl-Hubbard, a media law attorney in Washington state. “In Washington it’s getting worse, and it’s always horrendous at the federal level. I feel like my government is less accountable than it was 10 years ago. It’s bad. It’s really, really bad.”

The changing media landscape seems to make freedom of information more vulnerable. Even before digital-age disruption of traditional media economics led to newsroom **cuts of 40 percent or more**, journalists made up a relatively small proportion of public record requests, between 5 and 16 percent depending on the study. Commercial requesters dominate the field.<sup>18</sup> The number of federal FOIA requests submitted by local newspaper journalists dropped 50 percent from 2005 to 2010.<sup>19</sup> On top of that, news organizations, particularly in community journalism, are **less likely to sue** for public records.<sup>20</sup>

The last presidential administration saw the federal government **spying on journalists** and a record for both **cracking down** on leakers and **withholding public information**. Although Obama promulgated an executive order to increase openness on his first day in office, after a year only 13 of 90 federal agencies surveyed had taken any action to improve freedom of information, and after two years **only about half had acted**.

In the early days of the Trump administration, there have been reports of removal of data on **climate change and other issues** from government websites. President Trump has also called some mainstream journalism “fake news” and the “**enemy of the American people**.” There has also been a tolerance to date of federal agencies creating new barriers to record requesters, such as the FBI floating, then rescinding requirements that records requests be submitted by fax or letter, not email.

Any freedom of information study faces daunting challenges. **Federal FOI data** are not current, nor easily mapped across all the agencies. State and local data also are difficult to assemble, if at all. Those who would study freedom of information are left to their own devices. Studies by nonprofit groups show **troubling trends** as well as FOI **audits** of state and local governments that reveal violations at all levels.

This study relied on the insights of hundreds of experts and users of FOI laws to lay out the key barriers preventing citizens and journalists from seeing what their government is doing. The report then provides solutions suggested by the experts that could rebalance the scales, in legal reform, enforcement, public education, proactive disclosure, digital tools and improved coordination.



# PROBLEMS

The freedom of information community describes the current state of access to records at all levels of government as fraught with challenges. This study’s online survey listed eight issues, asking respondents if they were problematic and, if so, to what degree. Majorities found all eight issues to be at least somewhat problematic. “FOIA has always been a miserable process,” summed up Lynn Oberlander, press freedom litigation attorney for [First Look Media](#). “It’s a very awkward, expensive process where the ‘noes’ are much more frequent than the ‘yeses.’”

Government delays in responding to FOI requests topped the list of troubling issues, with 3 out of 4 respondents saying they are either “very” or “extremely” problematic. The survey’s seven other issues areas, detailed in the accompanying charts, were: excessive redaction, ignored requests, excessive search and copy fees, a general lack of enforcement, overuse of exemptions and data/technology problems. But “the biggest problem,” emphasized David Greene, senior staff attorney for the [Electronic Frontier Foundation](#), “is that it just takes too long.”

In follow-up interviews, experts identified further issues, including arbitrary denials, cultures of secrecy and hostility toward requesters. All in all, said one respondent, “the laws are woefully outdated and the training of public officials as to the requirements of the law is awful.”

## Delays and procedural roadblocks

ISSUE	N	MEAN (1–4, higher is worse)	NOT AT ALL PROBLEMATIC	SOMEWHAT PROBLEMATIC	VERY PROBLEMATIC	EXTREMELY PROBLEMATIC
<b>DELAYS</b>	188	3.09	5.3% (10)	20.7% (39)	34.0% (64)	39.9% (75)
<b>EXCESSIVE REDACTION</b>	184	2.47	21.7% (40)	32.1% (59)	23.4% (43)	22.8% (42)
<b>REQUESTS IGNORED</b>	185	2.44	20.5% (38)	36.2% (67)	21.6% (40)	21.6% (40)
<b>SEARCH / REDACTION FEES</b>	184	2.09	34.8% (64)	36.4% (67)	13.6% (25)	15.2% (28)
<b>COPY FEES</b>	188	1.97	38.8% (73)	37.8% (71)	11.2% (21)	12.2% (23)



The study indicates significant problems in how public record requests are administered. When the government waits too long, charges too much, holds back too much or simply ignores a request, seeking public information can become an exercise in frustration. That delays are the leading trouble spot **is not new**,<sup>21</sup> despite efforts to speed responses at the state and federal levels. “We’re trying to find some sort of solution to deal with the large request and the time that it takes government to respond,” said Robert Freeman, who has been executive director of the **New York Committee on Open Government** for 42 years. Attorneys, in particular, complained of increased “gaming of the system” by agencies that contrive legal arguments for keeping records secret, such as denying fee waivers, redacting information as nonresponsive to the request, and saying records cannot be released because they are not formatted in compliance with the Americans with Disabilities Act.

Other noted roadblocks included hiding records by contracting with private companies, evading transparency through emails on private accounts, and excessive fees, particularly for search, retrieval and redaction.

## Lack of enforcement

ISSUE	N	MEAN (1-4, higher is worse)	SD	NOT AT ALL PROBLEMATIC	SOMEWHAT PROBLEMATIC	VERY PROBLEMATIC	EXTREMELY PROBLEMATIC
<b>LACK OF ENFORCEMENT</b>	185	2.76	1.107	18.4% (34)	20.5% (38)	27.6% (51)	33.5% (62)

The second most significant problem identified by respondents was a lack of enforcement of public records law, with 3 of 5 respondents saying it is very or extremely problematic. “It would be nice if there were criminal penalties in the law that would target an agency or people who ignore the law,” said Jack Gillum, an investigative reporter for **The Associated Press**. “I can’t run red lights. I have to pay my taxes. I have to follow the rules. It’s just frustrating that these same governments that tell us to follow the rules don’t follow their own rules.” Many experts pointed to the need for more time-consuming and sometimes costly litigation, the primary recourse for enforcing toothless public record laws. Nate Jones, from **the National Security Archive**, predicts his organization will need to sue for records more in the next four years. “With Obama we had success negotiating,” Jones said, “but I suspect we will have to turn to the courts more now.”



## Exemptions and waning political will

ISSUE	N	MEAN (1-4, higher is worse)	SD	NOT AT ALL PROBLEMATIC	SOMEWHAT PROBLEMATIC	VERY PROBLEMATIC	EXTREMELY PROBLEMATIC
<b>OVERUSE OF EXEMPTIONS</b>	187	2.70	1.026	12.3% (23)	23.0% (43)	30.5% (57)	34.2% (64)

Experts noted a significant increase in exemptions to public record laws passed at the state level, particularly in the name of protecting personal privacy. Press associations and state FOI groups have difficulty monitoring all the efforts to weaken state laws. Emerging legislation that results in widespread record closures sometimes slides through before FOI groups can effectively mobilize. Congress improved FOIA in summer 2016 through the [FOIA Improvement Act](#), although some experts expressed concerns about the future.

Those interviewed also expressed concern that longtime champions of FOIA, such as U.S. Sens. Patrick Leahy, John Cornyn and Chuck Grassley, will eventually retire and few junior members appear ready to champion records access. With the exception of the [News Media for Open Government](#) lobbyist, Rick Blum, those at [OpenTheGovernment.org](#) and a few other industry lobbyists, the news business has been relatively reluctant to directly lobby or finance pro-FOI candidates. Many of those interviewed noted that it would be a good time to begin active campaigning for FOI with members of Congress and legislatures. “We had a member of Congress come in and tell us that he never checks the phone logs—an intern will pick up the phone and take notes,” said Jake Horowitz, founder of [Mic.com](#). “What does influence him is when people come to his district and talks on a human level of what it is important to them. He is a human, and powerful stories are powerful stories.”

## Technology lags

ISSUE	N	MEAN (1-4, higher is worse)	SD	NOT AT ALL PROBLEMATIC	SOMEWHAT PROBLEMATIC	VERY PROBLEMATIC	EXTREMELY PROBLEMATIC
<b>ELECTRONIC/ DATA ISSUES</b>	189	2.26	0.957	22.2% (42)	43.4% (82)	20.6% (39)	13.8% (26)

Some experts, particularly those in government or at the federal level, noted the problems created by archaic systems and processes used by agencies to create, maintain and disseminate records. Processes vary widely from state to state and town to town. Requesters complain of being provided paper



printouts or PDF files when a digital spreadsheet would be cheaper, faster and more easily analyzed. “If they give me 10,000 pages in PDFs, it’s not very useful,” said Joshua Hatch, president of the [Online News Association](#). “If I get records on punch cards, then it’s useless.” Other challenges include how to record, search and disseminate government communications posted to social media channels, such as Twitter or Facebook.

It should go without saying that computers manage information better than filing cabinets and paper. Nonprofit efforts to aid FOI through digital tools have been successful, such as [MuckRock’s](#) request services, recently paired with [FOIA Machine](#). Max Galka, creator of [FOIA Mapper](#), said collaboration is needed to build out even more tools. “Everyone is wandering in the dark trying to figure things out themselves,” he said.

## Problem areas cited in interviews

Throughout the interviews, respondents expressed concern that the public did not understand the rights they have and how those rights are threatened. Citizens’ fear of privacy invasion can overshadow the public benefits of open records,<sup>22</sup> and politicians have leveraged that fear to close records that would embarrass officials or expose inefficiency or corruption. Public approval of the [press is low](#),<sup>23</sup> and nonprofit efforts to promote freedom of information have waned in recent years.<sup>24</sup> Research has provided some insights into how people think about FOI,<sup>25</sup> such as the fact that people highly support the concept in general but have lower regard for some of the specifics, such as open tax records or divorce files. While some progress has been made on how to increase First Amendment literacy,<sup>26</sup> specific research-based messages to increase FOI literacy have yet to be identified.

Many respondents in this study offered messages they think would resonate best with the public, but they were frequently different and contradictory: focus on the horror stories of bad government, emphasize the positive stories that come from FOI, point out records that help in day-to-day life, espouse the democratic principles of freedom, hit people hard with emotional appeals, highlight journalists’ stories based on FOIA, emphasize that it is the citizen’s right, not just for journalists. Nike has “Just do it.” The dairy industry has “Got Milk?” FOI has no such business-funded brand or campaign. “We are dealing with a crisis that goes way beyond access to government information,” said Jane Kirtley, former director of the Reporters Committee for Freedom of the Press and current Silha Professor of Media Ethics and Law at the [University of Minnesota](#). “We are talking about public trust in institutions. I am appalled by the situation that exists and continues to exist. I’m not talking about Trump per se. I’m talking about the idea that everyone is out there with an agenda telling a story their way, so might as well just go along with your own media source. My point is, how do you persuade people that open government is essential?”

Respondents pointed out that many of the organizations making up the FOI advocacy community are struggling with major budget obstacles that in



many ways mirror those faced by the legacy news industry: Their traditional revenues are lower and new revenues have not filled the gap. “We just gotta get more funders,” said one respondent. Included in the “new money” group are both new media companies and foundations focused on the digital transformation of news. If the feared assaults on freedom of information come to pass, both new and traditional philanthropic supporters of FOI may increase giving, as they did during the public information rollback that followed the 9/11 attacks.

The news industry has cut back more than financial support. Its economic problems have resulted in cuts affecting FOI litigation. In addition, general newsroom cuts result in journalists pressed for time and less able to pursue records and fight for them.<sup>27</sup> This has been particularly felt among community journalists. Additionally, the temporary nature of project-based foundation funding can hamper long-term planning and recruitment. As is the case with nonprofit news organizations, nonprofit FOI groups need general support grants.

Organizations also are hampered because elected presidents of journalism organizations come and go. “A primary challenge is the churn of volunteer leaders,” said Joe Skeel, executive director of the Society of Professional Journalists. “Few organizational leaders focus on journalism as a whole—that’s the piece needed for long-term meaningful partnerships.”

Hundreds of FOI advocacy groups, with different priorities, often coordinate their efforts like cats, described by one respondent as “wet, surly and difficult to herd.” Many respondents, however, noted that coordination is improving among journalism groups, as illustrated in recent years by combined conferences, sharing of administrative duties, and joint grant proposals.



# SOLUTIONS

Survey respondents indicated that all of the 21 potential solutions listed in the survey are important to some degree in fixing FOI problems, from more resources for litigation to continuing national [Sunshine Week](#).

Here are the most favored solutions and the percentage of respondents saying the solution is either very or extremely important.

- **CUSTODIAN TRAINING**, 83 percent—This means officials and government employees who handle public record requests would know how to follow freedom of information policy.
- **REQUIRING ATTORNEY FEE PROVISIONS**, 80 percent—This means making changes to the law that would require governments that lose in court to pay the attorney fees of those who rightfully sought public records and won.
- **ADDING FINES/PUNISHMENT TO THE LAWS**, 77 percent—Governments and/or their employees that fail to follow procedures to release records would be fined or prosecuted for a criminal act. “We need to make real penalties for errant government officials who violate the FOIA,” said one respondent.
- **ADVOCACY TO INCREASE FOI SUPPORT**, 75 percent—This refers to public education and other methods of helping citizens understand why laws exist requiring freedom of information.
- **ALTERNATIVES TO RESOLVING DISPUTES**, 74 percent—These are methods that allow freedom of information disputes to be resolved quickly and without costly legal battles.

The accompanying chart shows how the solutions ranked among the online survey respondents. Again, though some methods ranked higher than others, it should be noted that not one solution was thought by a majority to be unimportant. In other words, there are many moving parts in every public records request, and the FOI community believed virtually all of it can be improved. That includes the skill of the person making the request; the way the request is made; the format of the information being requested; the ease with which it can be found; the fees proposed to find and reproduce it; the skill of those responding to the request; the decision to release all, part or none of the record; appeal processes, including courts, the laws and rules under which all of this happens; enforcement provisions; and legislative and public awareness of the need for freedom of information in the first place.



SOLUTION	N	MEAN (1-4, higher is worse)	SD	NOT AT ALL PROBLEMATIC	SOMEWHAT PROBLEMATIC	VERY PROBLEMATIC	EXTREMELY PROBLEMATIC
<b>REQUIRING ATTORNEY FEE PROVISIONS</b>	178	3.31	0.897	4.5% (8)	15.7% (28)	23.6% (42)	56.2% (100)
<b>CUSTODIAN TRAINING</b>	183	3.30	0.827	3.3% (6)	13.7% (25)	32.8% (60)	50.3% (92)
<b>ADDING FINES / PUNISHMENT TO LAWS</b>	180	3.23	0.962	7.2% (13)	15.6% (28)	24.4% (44)	52.8% (95)
<b>ADVOCACY TO INCREASE FOI SUPPORT</b>	182	3.08	0.889	5.5% (10)	19.2% (35)	37.4% (68)	37.9% (69)
<b>ALTERNATIVES TO RESOLVING DISPUTES</b>	180	3.06	0.857	3.9% (7)	22.2% (40)	38.3% (69)	35.6% (64)
<b>MORE FUNDING FOR AGENCIES</b>	184	3.04	0.904	4.9% (9)	23.9% (44)	33.2% (61)	38.0% (70)
<b>TRACKING OF PROPOSED LEGISLATION</b>	182	3.02	0.857	2.7% (5)	27.5% (50)	35.2% (64)	34.6% (63)
<b>LITIGATORS TO SUE ON BEHALF</b>	183	3.00	0.839	2.7% (5)	26.8% (49)	38.3% (70)	32.2% (59)
<b>MORE FUNDING FOR FOI PROJECTS</b>	178	2.97	0.843	3.4% (6)	27.0% (48)	39.3% (70)	30.3% (54)
<b>FUNDS FOR SUING</b>	183	2.93	0.887	4.4% (8)	29.5% (54)	34.4% (63)	31.7% (58)
<b>COORDINATION OF FOI GROUPS</b>	179	2.88	0.895	5.6% (10)	29.6% (53)	35.8% (64)	29.1% (52)
<b>PUBLIC EDUCATION AND TRAINING</b>	184	2.86	0.882	5.4% (10)	30.4% (56)	37.0% (68)	27.2% (50)
<b>FOI EDUCATION IN SCHOOLS</b>	183	2.83	0.977	9.8% (18)	27.9% (51)	31.7% (58)	30.6% (56)
<b>REQUESTER TRAINING</b>	183	2.78	0.868	5.5% (10)	34.4% (63)	36.6% (67)	23.5% (43)
<b>LEGAL HOTLINES</b>	182	2.77	0.868	5.5% (10)	35.2% (64)	36.3% (66)	23.1% (42)
<b>LOBBYING AND CAMPAIGNING</b>	178	2.74	1.043	14.6% (26)	27.0% (48)	28.7% (51)	29.8% (53)
<b>DATABASE OF STATE FOI LAWS</b>	183	2.69	0.969	12.0% (22)	30.6% (56)	33.3% (61)	24.0% (44)
<b>LEGAL AID TO SUE PRO SE</b>	181	2.65	0.916	9.4% (17)	37.0% (67)	32.6% (59)	21.0% (38)
<b>FOI RESEARCH</b>	179	2.62	0.881	7.8% (14)	41.3% (74)	31.8% (57)	19.0% (34)
<b>CONTINUING SUNSHINE WEEK</b>	177	2.59	0.95	12.4% (22)	36.2% (64)	31.1% (55)	20.3% (36)
<b>RATING OF STATE FOI LAWS</b>	183	2.37	0.969	21.3% (39)	33.9% (62)	31.1% (57)	13.7% (25)



# CROSSCUTTING SOLUTIONS

Interviews and the survey open-ended responses resulted in hundreds more recommendations, ranging from the practical to the idealistic. Michael Morisy, co-founder of [MuckRock](#), noted that the FOI community comes up with its best ideas when it works together. MuckRock itself joined forces with [FOIA Machine](#) last year. “It’s a relatively close-knit community,” he said. “A strength is that it is decentralized, and I think for the most part everyone is open and supportive with few exceptions.”

Though this survey indicated which solutions were most popular, the bigger question is: How can they be achieved? To cut through the complexity, the solutions were grouped into categories. Additional solutions were offered in the open-ended survey questions and study interviews along with comments made at recent meetings of FOIA experts.

These crosscutting ideas are not meant to be final answers; the ingredients of each can be deconstructed and reassembled into another set of combinations. But they illustrate how actions big and small could have a major impact on the free flow of the public’s information.

## Legal Reform

SOLUTION	N	MEAN (1–4, higher is worse)	SD	NOT AT ALL PROBLEMATIC	SOMEWHAT PROBLEMATIC	VERY PROBLEMATIC	EXTREMELY PROBLEMATIC
<b>REQUIRING ATTORNEY FEE PROVISIONS</b>	178	3.31	0.897	4.5% (8)	15.7% (28)	23.6% (42)	56.2% (100)

### **PUSH FOR ATTORNEY FEE PROVISIONS NATIONWIDE**

One of the most highly rated solutions was to add attorney fee provisions in every state requiring judges to award attorney fees when plaintiffs prevail in court. “The system doesn’t work unless there is an attorney fee provision,” said George Freeman, executive director of the [Media Law Resource Center](#). Experts said this single addition to every public records law could do the most toward improving FOI: It would reward attorneys who successfully help citizens and community journalists who seek to use the laws, and dramatically reduce the litigation funds needed to be raised from the private sector or foundations. It would also make agencies, particularly small ones in rural communities, think twice before violating the law, which is often the case in states that already have such provisions.



Tim Crews, publisher of the 3,000-circulation [Sacramento Valley Mirror](#), said he has been successful suing for records in large part because of the fee provision in California. “A lot of the little-town reporters are intimidated by the system,” Crews said. “It would be a lot more difficult if we didn’t have the fee-shifting provision.”

An organized effort would be needed to integrate this provision in every state, perhaps as the [Student Press Law Center](#) is successfully doing with its “[New Voices](#)” campaign to persuade legislatures to adopt laws protecting student journalists’ rights.<sup>28</sup>

SOLUTION	N	MEAN (1–4, higher is worse)	SD	NOT AT ALL PROBLEMATIC	SOMEWHAT PROBLEMATIC	VERY PROBLEMATIC	EXTREMELY PROBLEMATIC
<b>ADDING FINES / PUNISHMENT TO LAWS</b>	180	3.23	0.962	7.2% (13)	15.6% (28)	24.4% (44)	52.8% (95)

### CREATE AND ENFORCE PENALTIES

More than 3 of 4 experts suggested that it is very or extremely important to incorporate stiffer penalties into all public record laws, such as [Washington state’s law](#) that allows a judge to impose a fine of up to \$100 per day for each record not handed over.<sup>29</sup> A U.S. FOIA [amendment](#) proposed in the House in 2016 would have resulted in employees being disciplined or fired for violating the law. Many public record laws already have codified legal repercussions, but they are rarely enforced.

“We need to get public agency people to take this seriously,” said Lucy Dalglish, former director of the [Reporters Committee for Freedom of the Press](#) and current dean of the [University of Maryland Philip Merrill College of Journalism](#). “There have to be some benchmarks in the law or incentives. If you blow a deadline, then all fees are waived. If you declare information that has been opened is now closed, the agency has to pay a fine or employees lose their job. Sanctions for open record violations have to be related to money.”

### REDUCE OR ELIMINATE COPY FEES

Copy and search fees contribute relatively little toward the expense of administering public records requests, research indicates, yet pose a significant barrier to requesters, especially citizens and community journalists. One analysis of federal FOIA indicates that copy fee income has accounted for only 6 percent of agencies’ FOIA expenses since 1975.<sup>30</sup> Requesters should campaign to eliminate fees altogether. “It’s become very expensive searching for and copying records. ... Fee issues need to be addressed,” said Jason Leopold, a tenacious journalist from [BuzzFeed](#) who frequently requests records and files lawsuits. At minimum, agencies should not be able to charge fees for search, retrieval and redaction.



SOLUTION	N	MEAN (1-4, higher is worse)	SD	NOT AT ALL PROBLEMATIC	SOMEWHAT PROBLEMATIC	VERY PROBLEMATIC	EXTREMELY PROBLEMATIC
<b>TRACKING OF PROPOSED LEGISLATION</b>	182	3.02	0.857	2.7% (5)	27.5% (50)	35.2% (64)	34.6% (63)

### TRACK LEGISLATIVE PROPOSALS IN REAL TIME

Create a mechanism to monitor proposed exemptions at all levels of government to identify emerging issues quickly and then mobilize organizations. Currently, many organizations issue updates only to their own members and followers. The irony: Many of the organizations represent mass communicators, yet there is no comprehensive current events system for freedom of information at all levels of government. “We need to be able to put the word out quickly when there is an acute threat,” said Frank LoMonte, executive director of the [Student Press Law Center](#). “Or when groups blanket legislatures nationwide with targeted exemptions. Our enemies are good at those 50-state coordinated campaigns.”

SOLUTION	N	MEAN (1-4, higher is worse)	SD	NOT AT ALL PROBLEMATIC	SOMEWHAT PROBLEMATIC	VERY PROBLEMATIC	EXTREMELY PROBLEMATIC
<b>FOI RESEARCH</b>	179	2.62	0.881	7.8% (14)	41.3% (74)	31.8% (57)	19.0% (34)

### COLLABORATE TO PROVIDE USEFUL, STRATEGIC RESEARCH

Research that identifies key issues and debunks myths will lead to best practices in the access community and among lawmakers and the public. An up-to-date database of state FOI laws would be useful in an interface that allows easy comparison. Developing model language for digital-age public record laws can improve their chances of legislative adoption. Insights into the cost to society of secrecy and the economic benefits of FOI could speed approval of better policies. Researchers could examine local-level FOI costs in different states, tallying how much the government spends losing court cases and the money or lives saved through disclosure of records.

Lisette Garcia of the [FOIA Resource Center](#), for example, contends that little empirical evidence supports the common bureaucratic claim that agencies need more money to release records properly. “I can tell you a lot of these conclusions are false,” she said. “It’s feeding the government’s secrecy machine. We need studies to find exactly where the money is going with FOIA.”



On the journalism side is the persistent myth that impact cannot be measured. James Hamilton of Stanford University, author of the award-winning book [Democracy's Detectives: The Economics of Investigative Journalism](#), showed otherwise. He calculated, for example, that every dollar spent on investigative reporting results in at least \$100 in benefits to the public. He also determined that 40 percent of investigative stories that trigger policy change are based on public records. "The government does cost-benefit analysis all the time when considering new legislation," Hamilton said. "It can certainly be done."

SOLUTION	N	MEAN (1-4, higher is worse)	SD	NOT AT ALL PROBLEMATIC	SOMEWHAT PROBLEMATIC	VERY PROBLEMATIC	EXTREMELY PROBLEMATIC
LOBBYING AND CAMPAIGNING	178	2.74	1.043	14.6% (26)	27.0% (48)	28.7% (51)	29.8% (53)

### CULTIVATE FOI-FRIENDLY POLITICIANS

Adopt practices of other fields and industries by identifying FOI-positive politicians at the state and federal levels, educate leaders and their staffs, and help them get elected and stay in office. Task an organization to educate and rate politicians on FOI and a separate lobbying organization to fund campaigns. Some 501(c)(6) journalism and FOI groups can lobby and even endorse and fund campaigns, if they wish. For example, in 2014 the Society of Professional Journalists started an endowed [First Amendment Forever Fund](#) to ensure that press advocacy can be funded for generations. The fund requires an infusion of millions of dollars for national impact. "I think we need to cultivate the next set of true champions," said Rick Blum, director of [News Media for Open Government](#) (formerly called the Sunshine in Government Initiative), which lobbies for FOI on behalf of news organizations. "It is difficult to replace the long history of Sen. Patrick Leahy." So much of an agency's culture can be affected by leadership, said Patrice McDermott, executive director of [OpenTheGovernment.org](#). "There needs to be a cultural change inside the government where they realize that FOIA is not separate from their mission," McDermott said. Given the track record of recent presidents, that responsibility will rest with Congress, said Richard Tofel, president of [ProPublica](#). "If someone were running Congress and interested in real congressional power like they were in the '70s, then I think we would see better laws," he said.



# Litigation and enforcement

SOLUTION	N	MEAN (1–4, higher is worse)	SD	NOT AT ALL PROBLEMATIC	SOMEWHAT PROBLEMATIC	VERY PROBLEMATIC	EXTREMELY PROBLEMATIC
FUNDS FOR SUING	183	2.93	0.887	4.4% (8)	29.5% (54)	34.4% (63)	31.7% (58)

## INCREASE DIRECT FUNDING FOR LITIGATION

While some groups help litigate major cases that could affect legal precedent, average community journalists or citizens may still find themselves alone when seeking a police report or school record. “The reality is we need big sources of funds for this fight, and not just in Washington, D.C.,” said Mal Leary, president of the National Freedom of Information Coalition. “It’s every state and territory.”

There are modest sources of funds to help requesters sue. The [Knight FOI Fund](#)—through the [National Freedom of Information Coalition](#)—provides court filing fees. The Society of Professional Journalists’ [Legal Defense Fund](#) pays other legal costs but does not have enough to serve demand. Other such funds in the United States range from [First Look Media’s Press Freedom Litigation Fund](#) to crowdfunded experiments and individual campaigns. There is no major, comprehensive money source for FOI litigation for journalists who do not work at major national news organizations.

## BETTER PROMOTE (AND EXPAND) LITIGATION PARTNERSHIPS

Legal help exists more widely in nonmonetary forms, but not enough journalists know that. More promotion would increase general industry awareness of the [Reporters Committee for Freedom of the Press and Yale Law School Media Freedom & Information Access Clinic](#) (and soon the [Knight First Amendment Institute at Columbia University](#)), which pursue cases in partnership with journalists and media organizations. These organizations, along with the [Student Press Law Center](#), provide invaluable advice and information.

The Knight Foundation endowed a litigation fund at the Reporter’s Committee, helped expand the Yale clinic’s capacity, partnered with Columbia to create the \$60 million litigation and research institute there and helped the Student Press Law Center create an endowment. These are permanent legal resources that champion freedom of information and free expression, and should be universally known.

News organizations that partner with nonprofits to win public records cases must do a better job crediting those organizations and explaining to their readers the precise public information sought and why the court said



it should be released. FOI contests and digital pats on the back by advocacy groups through social media could recognize the news organizations (old and new) that still pay for lawsuits, including [The New York Times](#) and [The Associated Press](#), which routinely litigate for federal records.<sup>31</sup>

Newsrooms can reduce costs by jointly pursuing FOI requests and litigation. Under a president “who has contempt for journalists,” said Charles Lewis, founder of the [Center for Public Integrity](#), “we need newsrooms to stand up to what’s going to happen here.”

### CREATE A STATE FOI LITIGATION NETWORK

A network of university law clinics could help coordinate FOI litigation at the state level. In addition to taking on cases, a nationwide state litigation network could coordinate a coalition of attorneys willing to take on FOI litigation on contingency or pro bono. A network of legal clinics could accelerate efforts to get attorney fee provisions in every state law to guarantee payment to lawyers who win cases. Ideally, at least one attorney per state could help each of the open government coalitions there, perhaps assisted by the [National Freedom of Information Coalition](#). “The average citizen is fighting with the school board or town council,” said one respondent. “They aren’t fighting with the federal government. The emphasis really needs to be on state laws. That’s where the bulk of citizen engagement is.” That’s why an easy-to-use database, perhaps modeled on the federal [FOIA Wiki](#), should cover all courts down to the most local. David Schulz, co-director of the [Media Freedom and Information Access Clinic](#) at Yale Law School, is a potential facilitator of a network of transparency law clinics. “One of our goals is to see if we can coordinate law clinics,” Schulz said. “We need to leverage this work and create a community of transparency lawyers.” The Reporters Committee for Freedom of the Press is another potential facilitator. Its leader, Bruce Brown, has extensively studied law clinics nationally.

SOLUTION	N	MEAN (1–4, higher is worse)	SD	NOT AT ALL PROBLEMATIC	SOMEWHAT PROBLEMATIC	VERY PROBLEMATIC	EXTREMELY PROBLEMATIC
<b>ALTERNATIVES TO RESOLVING DISPUTES</b>	180	3.06	0.857	3.9% (7)	22.2% (40)	38.3% (69)	35.6% (64)

### INCREASE ALTERNATIVES TO LITIGATION

Litigation alternatives include independent agencies with the power to compel government officials to release records. For example, [Connecticut’s Freedom of Information Commission](#) hears complaints and can require agencies to provide records. Countries such as Mexico have established similar independent agencies. A new court service in Ohio provides denied requesters the ability to pay \$25 and have an attorney hired by the [Court of Claims](#) make a determination. So far the system appears to be helpful, according to Cleveland [WOIO-TV](#) reporter Dani Carlson, who



sought disciplinary records from a city in fall 2016. “This gives me another option to actually get the public records we are entitled to,” Carlson said. “Before, cities would just ignore your request. I hope everyone starts doing this. I’m all for this. Another tool in the tool belt.” Similarly, the federal [Office of Government Information Services](#) should have the authority to compel disclosure, or Congress or federal courts should create a separate independent agency to do so.

## Public education

SOLUTION	N	MEAN (1–4, higher is worse)	SD	NOT AT ALL PROBLEMATIC	SOMEWHAT PROBLEMATIC	VERY PROBLEMATIC	EXTREMELY PROBLEMATIC
<b>ADVOCACY TO INCREASE FOI SUPPORT</b>	182	3.08	0.889	5.5% (10)	19.2% (35)	37.4% (68)	37.9% (69)

### LAUNCH A MAJOR PUBLIC AWARENESS CAMPAIGN

Raise the money or pro bono support to retain a professional advertising/marketing firm to identify the best approach to a long-term public awareness campaign. Foundations interested in social justice, civil society or good government could be brought together to consider funding, and PSA endorsements from celebrities could be sought to promote freedom of information.

Historically, campaigns have had to be larger, focusing on the entire First Amendment, to get much attention on television. In 2002, a short-lived series of pro bono [First Amendment PSAs](#) urged Americans to cherish their freedoms in the aftermath of the 9/11 attacks. Campaigns came and went: Channel One, the [Radio Television Digital News Association](#), the [National Association of Broadcasters](#). A project for actors to support [Sunshine Week](#) also came and went.

The most progress on First Amendment messages has been made by Ken Paulson, former USA Today editor, president of the Newseum Institute’s [First Amendment Center](#), and creator of [Freedom Sings](#) to promote the First Amendment. He began this effort in 2007 to create a public advocacy campaign for the First Amendment, called [1 for All](#). The process he used could be a model for development of FOI messages.

The long-term **downward trend of public trust in the news media** and other American institutions cries out for a sustained, even permanent, campaign. Would the narrower focus of FOI allow a campaign to break through into sustained (and potentially costly) television and digital media when larger



First Amendment campaigns have not? “There is a lack of understanding of FOI by the general public and why it’s necessary,” said Katherine Garner, former director and current vice president of the National Freedom of Information Coalition. “Public education is what we need, with true market research.”

SOLUTION	N	MEAN (1–4, higher is worse)	SD	NOT AT ALL PROBLEMATIC	SOMEWHAT PROBLEMATIC	VERY PROBLEMATIC	EXTREMELY PROBLEMATIC
<b>CONTINUING SUNSHINE WEEK</b>	177	2.59	0.95	12.4% (22)	36.2% (64)	31.1% (55)	20.3% (36)

### EXPAND AND DIGITIZE SUNSHINE WEEK

The activities promoted by [Sunshine Week](#)—untold hundreds of news stories, cartoons, opinion pieces, surveys, speeches, workshops, proclamations, press releases and legislation—need to be more common year-round, rather than only during the week of Bill of Rights author James Madison’s birthday in mid-March. That the week works seems obvious; it has been a focal point for collaboration, new legislation and education. But it could be widely expanded from newspaper and nonprofits into television and digital media. “We have to reimagine it, redo it and start fresh,” said Barbara Petersen, executive director of the [Florida First Amendment Foundation](#), which helped launch the original Sunshine Sunday in Florida.

Imagine bursts of sunshine all year long in social media on dozens of platforms, using everything from promotional FOI bots to old-fashioned YouTube videos.<sup>32</sup> Imagine a special icon on every story in every media outlet done with public records requested under freedom of information laws. Imagine technology companies such as Google, Facebook and Twitter taking up the cause.

At the same time, Sunshine Week could still remain; it has for a decade been a focal point, a “news peg” for journalists to write about how people benefit from FOI. As a week it is as strong as the number and quality of the organizations that participate, including the American Library Association and the League of Women Voters. Regular evaluation would continually improve its reach, public education effectiveness and penetration of government at different levels.



SOLUTION	N	MEAN (1-4, higher is worse)	SD	NOT AT ALL PROBLEMATIC	SOMEWHAT PROBLEMATIC	VERY PROBLEMATIC	EXTREMELY PROBLEMATIC
<b>FOI EDUCATION IN SCHOOLS</b>	183	2.83	0.977	9.8% (18)	27.9% (51)	31.7% (58)	30.6% (56)

### INCREASE FOI EDUCATION IN SCHOOLS

Civics education in general **suffers in the schools**. The role of freedom of information is often relegated to journalism classes, if taught at all. Partnerships could be forged with groups to integrate FOI education in the schools; news literacy and FOI literacy are, at minimum, elements of civic literacy and are closely correlated.<sup>33</sup> A new Illinois law, for example, requires high school students to “acquire and learn to use the skills, knowledge, and attitudes that will prepare them to be competent and responsible citizens throughout their lives.”

Studies could pinpoint what K-12 education and university requirements cover. Add to that ongoing studies of what works and what does not in the teaching of digital, media, news and civics literacy. Freedom of information understanding cuts across all these areas. It could be incorporated into the new online news literacy teaching from [The News Literacy Project](#) and the [Center for News Literacy at Stony Brook University](#) as well as the digital lessons and games in popular online civics education projects such as [iCivics](#).

“Invest in civics and digital skills-building for every person in the country so that nobody is left on the other side of the divide,” said Alex Howard, deputy director of the [Sunlight Foundation](#). “Every person in high school should receive education on their rights in law and how government works, and all students should submit a public record request and complete a project engaging with local government.”

At minimum, the experts argued, every journalism student in a program accredited by the [Accrediting Council on Education in Journalism and Mass Communications](#) should know how to effectively file an FOIA request.<sup>34</sup> Why not actually file one, since a federal request can take just minutes with [MuckRock](#)? “We have to get colleges teaching public record laws to all journalism students,” said Tim Crews of the Sacramento Valley Mirror. “It’s more important than learning how to cover a football game.”



SOLUTION	N	MEAN (1-4, higher is worse)	SD	NOT AT ALL PROBLEMATIC	SOMEWHAT PROBLEMATIC	VERY PROBLEMATIC	EXTREMELY PROBLEMATIC
<b>CUSTODIAN TRAINING</b>	183	3.30	0.827	3.3% (6)	13.7% (25)	32.8% (60)	50.3% (92)
<b>PUBLIC EDUCATION AND TRAINING</b>	184	2.86	0.882	5.4% (10)	30.4% (56)	37.0% (68)	27.2% (50)
<b>REQUESTER TRAINING</b>	183	2.78	0.868	5.5% (10)	34.4% (63)	36.6% (67)	23.5% (43)

### TRAINING FOR ALL

Journalists and other frequent information requesters need more training in access to public records, many respondents said, especially at the state and local levels. “The answer lies in education, No. 1,” said Robert Freeman, executive director of the [New York Committee on Open Government](#). “It’s more important than ever that we have smart, smart professional journalists, because anyone can establish a blog or website and it’s harder to tell what’s true and what’s not. We need people who the public can rely upon for objective information.”

Government employees, too, should be better trained. Mitchel Pearlman, former director of the [Connecticut FOI Commission](#), agreed. “We should reinvent ourselves on a much more universal level. Ever since mankind has invented bureaucracy, bureaucracy has become self-serving and controlling.”

Some respondents noted that journalists need more training, as well, in basic math and spreadsheets. “I am concerned about the focus on news apps, where the focus is not on accuracy but on the ‘cool,’ ” said Jennifer LaFleur, senior data editor at the [Center for Investigative Reporting](#). “We need to focus on accuracy, especially with all the talk of fake news. A lot of times in the rush to get data up, there’s a lot less cleaning.” Tim Franklin, director of [The Poynter Institute](#), has worked with the [Florida First Amendment Foundation](#) to develop online FOI training for officials and citizens. Further collaborations with journalism organizations could help spread the knowledge and provide value to groups’ members. “There is great training out there,” he said.

## Technology

In this study’s “problem” section, government technology was ranked as very or extremely problematic by a third of respondents, and 80 percent believed it is at least somewhat of a problem. Nearly all of the proposed solutions, from tracking legislation to training and public awareness, face greater chances of success with the right technology, and almost sure to derail without it.



Technology powers the most popular tools, with study respondents identifying digital-age newcomer [MuckRock](#) as the most useful online/digital tool for requesters, followed by well-designed websites for downloadable data, [Reporters Committee for Freedom of the Press](#) and its [FOIA Wiki](#) and [iFOIA.org](#) as well as its online guides and letter generators. In addition, the overall user-friendly design, podcasts and letter generator were noticed on the [Student Press Law Center](#) site.

Data can be public but presented in such byzantine ways that it is not really accessible. “If you give me money, I think I can find ways to open data,” said Waldo Jaquith, who directed the three-year project [U.S. Open Data](#) and is now with [18F](#).

Other ideas included:

- **ARTIFICIAL INTELLIGENCE** that would scour the web for government data and records, code them, identify which records are most useful for specific requesters, and alert users to the information. This idea was inspired by [Banjo](#), which employs artificial intelligence to search social media sites for photos and video, identifies potentially newsworthy events as they emerge, and then notifies clients. [Socrata](#) founder Kevin Merritt said he would like to develop alerts for journalists when data are posted online that they are interested in, as well as integrate government data sets in other online services that consumers already use, such as [Zillow](#) for homebuyers.
- **ONLINE DATABASES** of request letters, responses and appeals that are keyword searchable. [MuckRock](#) has been developing an online repository of requests, records and appeal letters. [Alaveteli](#), developed in the United Kingdom and similar to MuckRock, is developing a professional version for journalists and frequent requesters that will allow requests to remain private until stories are published and provide access to expert advice and training materials. Both nonprofits allow people to use the software for their own communities.

Other ideas include technology upgrade grants for freedom of information nonprofits, many of which have fallen far behind media organizations in design thinking, new product development, responsive design, and use of social and mobile media (including bots). Local-level partnerships could do much more to automate public information distribution, as the Columbia Tribune did in Missouri with its [neighborhood database](#), or make public data easy to use, as the Texas Tribune [did](#). Such local projects, modeled after the national successes at [ProPublica](#), are best when accomplished with a mix of access, storytelling and delivery skills.

Other ideas further suggest that current technology still is not being used to its potential. They include apps or sites that would: allow government employees to post suggestions anonymously for what requesters should ask for; allow requesters to rate and post comments regarding the quality of the custodians and agencies; alerts whenever any legislative body proposes



restricting access; tech guides featuring better redaction tools (for agencies) as well as low-cost scanning and searching software such as [Document Cloud](#); and fostering virtual groups of citizens to collaborate on open government issues.

## Proactive disclosure

SOLUTION	N	MEAN (1-4, higher is worse)	SD	NOT AT ALL PROBLEMATIC	SOMEWHAT PROBLEMATIC	VERY PROBLEMATIC	EXTREMELY PROBLEMATIC
<b>MORE FUNDING FOR AGENCIES</b>	184	3.04	0.904	4.9% (9)	23.9% (44)	33.2% (61)	38.0% (70)

### MORE RESOURCES FOR FOIA OFFICES

The utopian access idea is to find a community willing to fully automate its records, so that all public information is available the moment it enters government computers and no one has to ask for anything. Given the support that access professionals report that they get within the government, utopia seems a long way off.

As more online tools, such as MuckRock, make it easier for people to request records, it seems likely agencies (especially those that have not digitized operations) will have even greater difficulty responding, said Tamara Manik-Perlman, chief executive officer of [NextRequest](#). “People impute ill will on the state-local level, but most of the time people are just overburdened and just don’t have time to do what they need to do,” she said. Also, the need for more training for record custodians was highly rated by those who filled out the survey.

“A lot of FOIA officers are terrific,” said Tony Corbo, who litigates access cases for [Food & Water Watch](#). “They are overburdened.... But it varies. Every time a new FOIA officer comes in, there’s a change. It’s a tough job. Some have been pains, but the thing is, FOIA officers tend to be very conscientious and try to do a good job.” Despite these observations, access experts fear the new presidential administration will provide fewer dollars, not more, for freedom of information.

### HELP GOVERNMENT POST DATA ONLINE

Waldo Jaquith’s three-year project, [U.S. Open Data](#), sought to get government information online. But he found the public accountability argument didn’t get far with agencies. “That’s a really poisonous thing to tell someone in government,” Jaquith said. “We changed the narrative to help them figure out how posting data online would help them save time and make it easier to share with other agencies. We showed them they could post links online to frequently requested data and then not have to respond to as many FOIA requests. They love that.”



The FOI community should work more closely with data custodians to emphasize the productivity benefits of systems that automatically post records online as they are created. Former journalist Tom Johnson, who founded **It's the People's Data** in New Mexico, works hand-in-hand with Santa Fe, Los Alamos and other cities to help them post data proactively. Johnson suggests, for example, that teams could go into cities and inventory data held across different departments, figure out what data are useful to multiple departments, and create a system for streamlined collection, use and posting. "The thing about the whole open data process," Johnson said, "is the first benefit isn't to citizens or journalists, but to people who work in government."

### POST DATA ONLINE THAT GOVERNMENT WILL NOT

Acquire records and data from the government and provide it online for everyone to use, much like [MuckRock](#), [The National Security Archive](#), [Harvard Free Law Database](#), Russ Kick's [Memory Hole 2](#), the [OpenGov Foundation](#), [governmentattic.org](#), [ProPublica](#) and many others. Carl Malamud posts government documents, including patents and government regulations, to his website, [Public.Resource.org](#), much to the angst of agency vendors that want to sell public information at a profit. "A lot of databases are hidden from the public," Malamud said. "We need more advocacy in liberating scientific journal articles, the law and databases."

## Build collaboration

SOLUTION	N	MEAN (1-4, higher is worse)	SD	NOT AT ALL PROBLEMATIC	SOMEWHAT PROBLEMATIC	VERY PROBLEMATIC	EXTREMELY PROBLEMATIC
<b>COORDINATION OF FOI GROUPS</b>	179	2.88	0.895	5.6% (10)	29.6% (53)	35.8% (64)	29.1% (52)

### GROW COLLABORATION AND COORDINATION

"We definitely need to bring groups together," said Dan Bevarly, executive director of the [National Freedom of Information Coalition](#). "We all have the same target, and it's an identified target. We need to work smarter, not harder, at moving this needle." Funders might encourage greater collaboration among FOI groups by suggesting that organizations that are duplicating efforts apply for grants together; that may be especially effective when seeking money from new FOI funders. In-person gatherings of group executive directors could help organizations develop stronger relationships and build trust. "It really is all about relationships," said Irving Washington, executive director of the [Online News Association](#). "There has to be ways to facilitate relationships naturally, rather than forcing them."



The groups should identify their “lanes,” said David Boardman, chair of the [Reporters Committee for Freedom of the Press](#) board and president of the [American Society of News Editors](#) Foundation. “Have everyone identify their core competencies; otherwise everyone is treading on the same turf,” he said. Groups should build on their competencies and let others focus on their core competencies, accounting for countervailing forces: boards committed solely to their own organizations, rotating volunteer presidents, competition for dollars, and the need to show members and funders they are getting value for their dollars.

“When we are more unified as a profession, we are more powerful,” said Doug Haddix, executive director of [Investigative Reporters and Editors](#). “There is strength in collaboration.” Collaboration has improved, many noted. On Jan. 12, 2017, for example, about 50 representatives of journalism and civil society organizations gathered in Washington, D.C., for a press freedom summit to talk about how to better coordinate, including in FOI.<sup>35</sup>

Nonprofit groups within journalism can be even more effective when they partner with groups outside journalism. When the League of Women Voters creates [voter guides](#) and participates in Sunshine Week or when journalism groups partner with the American Library Association or the many others organized by [OpenTheGovernment.Org](#), their voices are more clearly heard. Natural open government allies include good-government groups, universities, social justice groups, historical groups, unions, librarians, attorneys, tech companies, hackers and data brokers. “I think government transparency and accountability transcends any philosophical boundaries,” said Jon Riches, director of national litigation for the [Goldwater Institute](#), a conservative-libertarian think tank in Arizona.

## LOOK AT FUNDRAISING AS A PROFESSIONAL FUNDRAISER WOULD

Many respondents said that now is a good time to bolster support for advocacy and assistance to journalists and citizens seeking government information. Nonprofit journalism-related organizations generally have looked to a small number of foundations for support. Yet the [Media Impact Funders database](#) lists \$7.7 billion in media grants going back about a decade, given (at the time of this writing) by some 12,000 philanthropies; the database puts “open government” grants at \$225 million from about 150 funders. Focusing on a few is not the strategy a professional fundraiser would use.

Outside of foundations, potential new funding sources noted by respondents were attorneys, technology companies, universities, Hollywood celebrities, libertarian think tanks and the people themselves. ([Seven of every 10 philanthropic dollars are given by individuals](#); foundations in 2016 gave just 16 percent.)

Michael Tolhurst of the [Charles Koch Institute](#), for example, said his organization would consider funding freedom of information since it fits within the group's interests in individual freedoms and government



accountability. Innovators within the tech industry said many of them care about the issues, particularly in developing a more engaged citizenry. [Google](#) and [Facebook](#) have developed journalism outreach projects in recent years. One respondent suggested journalists apply for [National Science Foundation](#) or [National Archives](#) grants to develop data analytic tools.

The presidential transition is sure to heighten interest in open government among traditional funders as well as new ones. [Already there are calls for First Amendment funding coalitions](#). A window is open for donors to commit (or recommit) to the idea, as Bill Church, president of [Associated Press Media Editors](#), put it, “that the public’s right to know is tantamount to the strength of our democracy.”

### **REBOOT THE NATIONAL FREEDOM OF INFORMATION COALITION<sup>36</sup>**

While dozens of organizations work at the federal level on FOIA, few nationwide coordinating bodies assist citizens and community journalists at the state level. The NFOIC was a volunteer group founded to help state coalitions for open government. With Knight Foundation support, it expanded the number of state coalitions to reach almost all 50 states and embedded a headquarters at the University of Missouri.

Many respondents said NFOIC should be reinvigorated with a new board, new mission and new partners. State coalitions also need help finding ongoing support. Additional staff at NFOIC could assist coalitions in raising their own money.

## Big ideas from interviewees

### **CREATE A CONSTITUTIONAL RIGHT TO KNOW**

As difficult as it may sound, advocates could push for a constitutional amendment to secure the public’s right to know, as it is enshrined in some state constitutions and in some nations’ constitutions, including Liberia.<sup>37</sup> This was called for by Harold Cross in his 1953 book “The People’s Right to Know,”<sup>38</sup> which eventually led to passage of U.S. FOIA. In the 64 years since, a constitutional amendment has yet to happen. “Just like copyright is in the Constitution, I think FOI should be in there,” said media law scholar Daxton “Chip” Stewart, from [Texas Christian University](#). “I know it’s pie in the sky and it would take political will, but that would be my perfect world.” Further, make all three branches of government subject to FOIA instead of just the executive branch, as they are in some other countries, such as South Korea. Also, recognize in the United States the right to access government information as a fundamental human right—as essential as the right to education, marriage, property ownership, bed and food, and life without torture or slavery—as outlined in the United Nations’ [Universal Declaration of Human Rights](#) since 1948.<sup>39</sup>



## BECOME A PLAYER IN THE NEWS CREDIBILITY MOVEMENT

Fact-checking and renewing credibility in news have emerged as key challenges since the 2016 presidential election, and government records are central to those issues. Public records, like news, can be faked, and document verification tools are critical. At the same time, government records can lend credibility to news as primary sources. Journalists and citizens who acquire public records and post them online provide information that can be verified. FOI organizations and advocates should work with such efforts as the [Democracy Fund's Public Square Program](#), which seeks to bolster trust in the news through building healthy ecosystems of community knowledge organizations. FOI should be integrated into and be seen as part of those ecosystems.

## ADJUST LANGUAGE AND PERCEPTIONS

Mark Weiler, an FOI scholar and librarian at [Wilfrid Laurier University](#) in Ontario, Canada, proposes that requesters and government change the way they think and talk about FOIA. For example, he suggests people put in an “order” for records, rather than a request, as in putting in an order for copies. He also suggests that society conceive agencies as “publishers” of information, and therefore, when a government agency prohibits publication of information by refusing to copy a record for a citizen, then it is essentially censoring. “We need to minimize government censorship of their own copy centers,” he said. In this approach, those who place orders are no longer seen as antagonists. “What is antagonistic is when the government wants to censor it.” Ultimately, he said, when the public seeks its own records, state of mind and framing changes could lead to a more fluid process with more informed, confident users of government information.

## TEST COMMUNITY INFORMATION TAXING DISTRICTS

Just as students at many universities have voted to tax themselves to support campus media, pilot a special [community information taxing district](#) that would financially support efforts to provide community information, including public media, libraries, journalism and open government coalitions. The coordinated information entities, perhaps even located in a single community information hub, would be beholden to the public, not elected officials or advertisers.

## EXPLORE GOVERNMENT TAX BREAKS

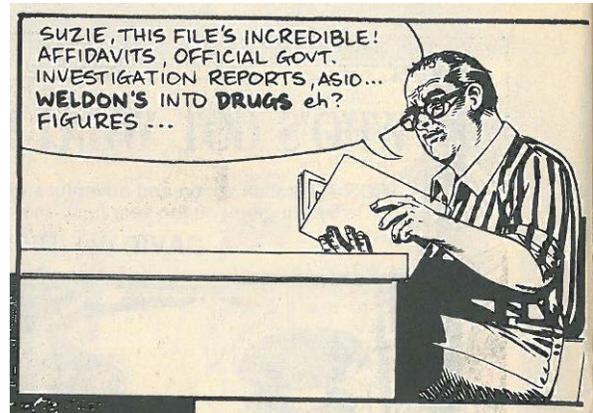
Government subsidies have been provided for centuries to ensure that citizens have information, including through lower postal rates for newspapers and waived copy fees under FOIA for journalists. Provide tax breaks for organizations that supply information for the public good, such as for beats covering city hall. “They would just have to think it through to maintain independence,” said Penny Abernathy, Knight Chair in Journalism and Digital Media Economics at the [University of North Carolina at Chapel Hill](#).



## INFUSE FOI IN CULTURE

Seek ways to integrate FOI in culture, whether through movies, books, video games, apps or viral videos. For example, in 2016 a crowdfunding effort led to the publication of a [comic book](#) out of Finland about [Anders Chydenius](#), advocate for the world's first freedom of information act.<sup>40</sup> In 1992, an Australian comic book, "The Southern Squadron," featured a "Freedom of Information Act" series where the nation's FOIA law was used by journalists to find information about the superheroes. David de Vries, the comic book's co-creator, said he used FOIA as a tool to introduce the backgrounds of the characters, and even though portrayal of the law's mechanics was not exact (the journalists stole the records rather than submitting a request, and then they were killed as a way to suppress the material), the mere introduction of the law to the public was valuable. "Any form of narrative fiction storytelling is not to educate like a documentary, or even preach," de Vries said. "When you tuck your kid in bed you don't give your kid a lecture, you give him a story. And that is what comics can do. It opens people up to the concept. ... That is what you need more than anything else—to be aware it exists." In the United States, television, video, movies and digital gaming could be sources of FOI education.

Two panels focusing on journalists reveling in the power of FOIA in getting information, from "Southern Squadron: Freedom of Information Act," by David de Vries and Glenn Lumsden, 1992, issue 1:





# CONCLUSION

This study finds an earnest group, which includes government officials in the access community, focused on what it sees as an opportunity to preserve and even expand freedom of information in cities, states and the nation.

If the open government community was hoping for something to rally around, this report signals its arrival. Nearly 9 of 10 experts who contributed to this study—be they journalists, librarians, nonprofit groups or government employees—fear the new administration will worsen freedom of information and government transparency.

“It’s obvious this administration is going to be even less forthcoming than the last one, which is saying something,” said Jameel Jaffer, executive director of the Knight First Amendment Institute at Columbia University. “Transparency will become more of a battleground.”

For news people, the issue at stake is what [Nieman Reports](#) calls “the most powerful and fundamental tool of American journalism.” Freedom of information is, in fact, the foundation upon which every profession is built. Without open government, there are no journalists, librarians, nonprofits or government employees, not as we know them today—just a mass of people, as one put it, “wandering in the dark.”

A freedom of information renaissance. It sounds somehow right, at this moment in history, when we are focusing on the fundamental elements of the American democracy. New projects and partnerships, new money, technologies and momentum toward once again being a global leader in open government: Is this possible? This is a community that can react well to crisis. Cold War secrecy led to federal FOIA. Watergate aided passage of new state public record laws. The 9/11 attacks and Iraq War secrecy preceded the expansion of state FOI coalitions, Sunshine Week and significant endowment campaigns for access organizations.

Part of what has brought us to today, a significant number of this study’s participants agree, is a steady decline in transparency and an increase in public records request denials over the past four years. Respondents outlined problems in delays, redactions, denials and technological barriers. Yet the Obama years were a study in action and reaction. Not all the news was bad. “There is an awful lot of information disclosed under FOIA,” said Harry Hammitt, publisher of [Access Reports](#). “We could be much worse off.”



To avoid that fate, the FOI community watches what many others do not—the flow of the public facts. Of its many ideas, the author believes a consensus has formed around four priorities:

- 4. Band together.** While journalism groups have started to work together, at times with civil society groups, they need to further break down walls, setting aside competitive self-interests, suspicion, ego and structural impediments. To raise more money, to strengthen the groups, they must divide the job at hand and work together.
- 5. Take the fight to the states.** A state litigation network with one or more hubs could connect requesters with lawyers and university law clinics, coordinate a campaign to get attorney fee provisions added to state laws, coordinate researchers to answer key FOI questions, and serve as a quick-response center for FOI emergencies nationwide.
- 6. Bolster education and advocacy.** A Sunshine Coalition could work to create an effective ad campaign for the public, including expanding Sunshine Week to a year-round effort, integrate FOI into schools, enhance training for journalists and record custodians, and empower a new cadre of FOI-friendly politicians.
- 7. Develop digital technology.** Technology companies could work with MuckRock, Reporters Committee and others to bring FOI organizations into the digital age and to create new tools to organize supporters, raise money, share information and in other ways that will enhance government transparency, as well as aid government agencies in disseminating data online proactively.

If Thomas Jefferson was right, the fight to free public information must happen regardless of which parties are governing, and it is a fight that is never fully won. Still, without teamwork, training, technology and support of the people—and tenacity—progress can be elusive. So the final word goes to David Cay Johnston, a Pulitzer Prize-winning reporter who launched [DCReport.org](http://DCReport.org) to watchdog the new administration. “The republic has survived a lot of things,” he said. “We survived a Civil War. The Constitution is durable. The worst thing to do is be fearful. Don’t lose heart.”



# METHODOLOGY

This study combined in-person and phone interviews with an online survey of journalists, advocates, researchers, attorneys and other experts who have an interest in freedom of information.

## Survey

An online survey was conducted Dec. 13 through 31, 2016. A link to the survey was distributed via email, newsletter and social media channels through Investigative Reporters and Editors, National Freedom of Information Coalition members, American Society of News Editors, Media Law Resource Center, FOI-L listserv through Syracuse University, Society of Professional Journalists, OpenTheGovernment.org, Online News Association, Investigative Nonprofit News, and state press associations.

A total of 228 people, averaging 13 minutes per participant, completed the survey, administered through Qualtrics software (see the Appendix for survey questions and results). Responses were anonymous unless participants wished to provide their names and email addresses at the end to be possibly contacted for elaboration (117, or about half, did so).

The sample is not scientific or representative of the general population or journalists as a whole, but instead was intended to gather impressions and suggestions from those most involved with and passionate about access to government information. Of those who reported their field, 61 percent were journalists primarily from a mixture of news organizations large and small, 12 percent were from FOI advocacy organizations, 8 percent from government, and the rest from a variety of fields, including academia, unions and law firms. Of the respondents, 52 reported they were members of Investigative Reporters and Editors, 35 members of the Society of Professional Journalists, 14 members of state open government coalitions, 14 from public record custodian organizations, 10 members of the bar, and others reported membership in a variety of other organizations. Responses were analyzed in Microsoft Excel and SPSS (see the Appendix for a summary). Respondents were allowed to skip questions that they did not know or want to answer. Answers to open-ended questions were grouped into clusters of similar answers.



## Interviews

In addition to the online survey, 108 freedom of information experts were interviewed via phone or in person from Oct. 5, 2016, through Jan. 27, 2017. Participants were selected from a cross section of organizations and activities within journalism, tech companies, public service, law, academia, government and civil society groups. About 50 people contacted for the study did not respond or could not arrange for a time to be interviewed. The semistructured interviews averaged 43 minutes. Most (65 percent) of the respondents wished to be on the record, and the rest requested that all or parts of their responses be confidential. Interview transcripts were gleaned for commonalities as well as unique ideas and perceptions, with the intent of providing a summary of broadly accepted views as well as contrary opinions and new insights. All interviews, surveying, analyses and writing were performed by the researcher, David Cuillier.

## The research team

**DAVID CUILLIER**, Ph.D., is director and associate professor at the University of Arizona School of Journalism. He was a newspaper reporter and editor before earning his doctorate in communication at Washington State University in 2006. He was president of the Society of Professional Journalists in 2013-14, chair of SPJ's Freedom of Information Committee for five years, is a member of the National Freedom of Information Coalition board, and has contributed FOI columns to the IRE Journal since 2013. He has testified before Congress regarding FOIA in 2010, 2014 and 2016, has published numerous studies regarding freedom of information and, with Charles N. Davis, is co-author of "The Art of Access: Strategies for Acquiring Public Records" and co-editor of "Transparency 2.0: Digital Data and Privacy in a Wired World." Email him at [cuillier@email.arizona.edu](mailto:cuillier@email.arizona.edu).

**ERIC NEWTON**, innovation chief at the Walter Cronkite School of Journalism and Mass Communication at Arizona State University and former journalism vice president at the John S. and James L. Knight Foundation, served as the study's consulting editor.



# APPENDIX

## Survey Questions and Results

*(Results may not total 100 percent due to rounding.)*

Thank you in advance for helping us better understand the freedom of information landscape in the United States and what might be done to improve it. Your perspective, which will be kept confidential, is critical to improving government and society. The results will be reported by the Knight Foundation this spring and emailed to you directly. You can remain anonymous, if you wish, or provide your name and contact information at the end. If you have questions or would like to elaborate on your answers, feel free to contact project director David Cuillier, associate professor at the University of Arizona School of Journalism, at [cuillier@email.arizona.edu](mailto:cuillier@email.arizona.edu).

### 8. StateRequest

When was the last time you requested a LOCAL/STATE record under your state public records law

1	Past two days	32	14.1 %
2	Past week	42	18.5 %
3	Past month	50	22.0 %
4	Past year	52	22.9 %
5	Past four years	16	7.0 %
6	More than 4 years	13	5.7 %
7	Never	22	9.7 %
		227	100 %

### 9. StateTrend

Overall, has access to public records in your state gotten worse or better in the past four years?

1	Much worse	21	11.8 %
2	Somewhat worse	60	33.9 %
3	About the same	73	41.2 %
4	Somewhat better	17	9.6 %
5	Much better	6	3.3 %
		177	100 %



### 10. StateGrade

Grade the state you live in (or the state you are most familiar with) on how well agencies, in general, provide records to the public (A, B, C, D, F).

1	A	9	4.2 %
2	B	54	25.5 %
3	C	88	41.5 %
4	D	42	19.8 %
5	F	19	9.0 %
		212	100 %

### 11. State

What was the name of the state that you graded? (open-ended)

### 12. StateFuture

What do you think will happen in the next four years regarding access at the state/local level? It will be...

1	Much worse	33	15.9 %
2	Somewhat worse	84	40.4 %
3	About the same	68	32.7 %
4	Somewhat better	21	10.1 %
5	Much better	2	1.0 %
		208	100 %

### 13. FedRequest

When was the last time you requested a FEDERAL record under U.S. FOIA?

1	Past two days	12	5.3 %
2	Past week	17	7.6 %
3	Past month	22	9.8 %
4	Past year	63	28.0 %
5	Past four years	33	14.7 %
6	More than 4 years	24	10.7 %
7	Never	54	24.0 %
		225	100 %

### 14. FedTrend

Overall, has access to public records at the federal level (FOIA) gotten worse or better in the past four years?

1	Much worse	18	12.2 %
2	Somewhat worse	43	29.1 %
3	About the same	69	46.6 %
4	Somewhat better	15	10.1 %
5	Much better	3	2.0 %
		148	100 %



### 15. FedFuture

What do you think will happen in the next four years regarding access at the federal (FOIA) level? It will be...

1	Much worse	103	12.2 %
2	Somewhat worse	66	52.6 %
3	About the same	21	33.7 %
4	Somewhat better	4	10.7 %
5	Much better	2	1.0 %
		196	100 %

### 16. Future

Why do you make that prediction about the future about access to state/ local, or federal or both types of records? (open-ended question)

### 17. Trump

In what way do you think the incoming presidential administration will affect access to public records at the federal level? It will be ...

1	Much worse	116	57.4 %
2	Somewhat worse	58	28.7 %
3	About the same	21	10.4 %
4	Somewhat better	5	2.5 %
5	Much better	2	1.0 %
		202	100 %

### 18. Denied

Over the past four years, the prevalence of times you've been denied records has ...

1	Increased substantially	23	13.7 %
2	Increased slightly	40	23.8 %
3	Stayed the same	95	56.5 %
4	Decreased slightly	9	5.4 %
5	Decreased substantially	1	0.6 %
		168	100 %

### 19. Suing

If you work for a news organization, over the past four years, your company's willingness to sue for records has ...

1	Increased substantially	20	18.9 %
2	Increased slightly	15	14.2 %
3	Stayed the same	51	48.1 %
4	Decreased slightly	8	7.5 %
5	Decreased substantially	12	11.3 %
		106	100 %



# Access to records

Now let's talk about specifics ... Please rate the following categories in regard to their impediment to your acquisition of public records.

1. Not at all problematic
2. Somewhat problematic
3. Very problematic
4. Extremely problematic

ISSUE	N	MEAN (1-4, higher is worse)	SD	NOT AT ALL PROBLEMATIC	SOMEWHAT PROBLEMATIC	VERY PROBLEMATIC	EXTREMELY PROBLEMATIC
<b>DELAYS</b>	188	3.09	0.903	5.3% (10)	20.7% (39)	34.0% (64)	39.9% (75)
<b>LACK OF ENFORCEMENT</b>	185	2.76	1.107	18.4% (34)	20.5% (38)	27.6% (51)	33.5% (62)
<b>OVERUSE OF EXEMPTIONS</b>	187	2.70	1.026	12.3% (23)	23.0% (43)	30.5% (57)	34.2% (64)
<b>EXCESSIVE REDACTION</b>	184	2.47	1.071	21.7% (40)	32.1% (59)	23.4% (43)	22.8% (42)
<b>REQUESTS IGNORED</b>	185	2.44	1.047	20.5% (38)	36.2% (67)	21.6% (40)	21.6% (40)
<b>ELECTRONIC/DATA ISSUES</b>	189	2.26	0.957	22.2% (42)	43.4% (82)	20.6% (39)	13.8% (26)
<b>SEARCH / REDACTION FEES</b>	184	2.09	1.044	34.8% (64)	36.4% (67)	13.6% (25)	15.2% (28)
<b>COPY FEES</b>	188	1.97	0.997	38.8% (73)	37.8% (71)	11.2% (21)	12.2% (23)



## OTHER IMPEDIMENTS

Other impediments that need to be addressed? (open-ended)

OTHER IMPEDIMENTS	COUNT
Arbitrary and inconsistent responses by custodians	7
Culture of secrecy within government, lack of commitment	7
Lack of enforcement or teeth in the law	6
Reverse actions—SLAPP suits and outward hostility	6
Omitting records that are known to exist	5
Using private emails to conduct state business	4
Understaffed FOIA offices	3
Lack of consistency in granting fee waivers and expedited review	3
FERPA and HIPAA	2
Overreliance on AG approval before release, causing delays	2
Agencies requiring greater specific description of records	2
Difficult to figure out what records exist to ask about	2
Politicization of process—denials purely political	2
Outdated technology and processes in agencies	2
Process is confusing and daunting	2
Lack of pro bono assistance and legal aid	2
Using formats (e.g., PDFs) to make records hard to use	1
Lack of time limit on producing records	1
Law enforcement investigations cause long delays	1
Blacklisting of some requesters	1
Access to courts expensive	1
Creation of new records a tactic for denial	1
Private prisons claiming they aren't subject to FOI laws	1
Requiring a written request for everything	1
Frequent deletion/dumping of records—no retention	1
Need tracker to track records requests through system	1
Increase in charging time for searching/handling requests	1
More records should be put proactively online	1
Jurisdictions that require residency requirements for requests	1
Agencies know newspapers less likely to sue today	1
Some requesters abuse the system	1
Educating officials, particularly new ones	1
Congress exempted from FOIA	1
Bad case law	1
Bias against commercially motivated citizens	1
Officials avoiding written records/calls to circumvent law	1



**14. Improve**

If you were all powerful and had unlimited funds, what would you do to improve access to government information? (open-ended)

**15. Sunshine**

What could be added to national Sunshine Week ([www.sunshineweek.org](http://www.sunshineweek.org)) to maximize impact?

SUNSHINE WEEK	COUNT
Identify and promote poster child examples of bad cases; shame them	14
Raise awareness of Sunshine Week; promote it more, publicity	11
Focus on stories where records helped average people	9
Too journalism-focused and preaching to the choir; expand outside news	7
Lead an annual records audit on a specific topic each year	5
More public education and community talks	6
Don't know what Sunshine Week is	3
Make it a yearlong effort	2
Expand to youth/schools education	2
Focus on programs that help government officials learn	2
Figure out if it has any real impact	2
Have news websites highlight FOI-driven stories	2
Promote testimonials of good record custodians	1
Get star power to promote—celebrities	1
More advance notice to participants to get involved	1
Get into lobbying	1
Coordinate meetings/forum/conference for frequent FOI users	1



## 16. Digital

What are the most useful online/digital tools in aiding people's ability to access records? (open-ended)

USEFUL FOI DIGITAL TOOLS	COUNT
MuckRock	27
Well-designed websites with the ability to search and download bulk data	18
Reporters Committee open government guide	7
Agencies that allow records requests to be filed online	6
Google	6
SPLC and RCFP online letter generators	6
FOIA machine	6
Online request tracking	3
IRE.org	3
Email	3
Release to one, release to all online	2
NFOIC	2
WikiLeaks	1
Utah Interactive for online audio	1
USAspending.gov used to be good	1
TRAC database	1
Open-source software	1
PACER	1
Opensecrets.com	1
New York State Committee on Open Government website	1
The National Security Archive	1
Oakland Public Record Trac portal	1
Reporters Committee new FOIA wiki	1
Reporters Committee iFOIA	1
DocumentCloud	1
Ballotpedia pages on state FOI laws	1
ProPublica	1
SPJ.org	1
NLM DocMorph	1
FTP	1
FOIA.gov	1
PDF scrapers	1
Data.gov	1
CometDocs	1
Tabula	1



## 17. Tools

What tools would be helpful that have yet to be created? (open-ended)

NEEDED DIGITAL TOOLS	COUNT
Tools that help requesters track requests	7
Super search—keyword search all data within an agency	5
Improved redaction tools for text, video, emails	5
Searchable database of FOI requests and responses	4
Tech and tools aren't the answer	4
Directory of lawyers willing to help fight for records	4
National database linking all government data	3
Standardized portal used by all agencies	3
Online appeal language and case law depending on topic	3
Online database of exemptions and laws for every state	2
Electronic reading rooms with frequently requested records	2
Open-source platform for agencies to manage requests	2
An easier web scraper	2
Yelp-like reviews for how well agencies comply; registry of the good/bad	2
System that allows agencies to better share information/requests	1
Online tool that makes suing at the state level easy	1
MuckRock, but with money	1
More safe mechanisms for leaking information online	1
Lower-cost OCR software	1
Means of measuring agency FOI performance	1
Online database of FOI stories to generate reports for lobbying	1
Easier PDF scrapers	1
Coalition of librarians to crunch data for the public	1
Online research and information about FOI	1
Crowdfunding site for FOI litigation	1
911 emergency response network for bad legislative proposals	1
More Excel tutorials for journalists	1



## 18. Orgs

What are the most influential FOI organizations at the state / local level or federal level, or both? (open-ended)

GROUP	COUNT
State coalitions	46
RCFP	31
SPJ	20
MuckRock	19
ACLU	16
NFOIC	16
Press associations	16
Sunlight Foundation	11
Newspapers	11
IRE	9
Electronic Frontier Foundation	4
OpenTheGovernment.org	4
ProPublica	4
Sunshine in Government Initiative	4
ASNE	3
Common Cause	3
National Security Archive	3
Associated Press	1
Center for Investigative Reporting	1
Center for Public Integrity	1
Congress	1
EPIC	1
FOIA Resource Center	1
Independent media	1
Jason Leopold	1
NAA	1
OGIS	1
POGO	1
Public Citizen	1
RTDNA	1
Student Press Law Center	1
Yale Law Clinic	1
Library associations	1
Center for Responsive Politics	1
Knight	1
Code for America	1



### 19. Partners

What other organizations outside of the traditional core FOI circle do you think might be viable partners/collaborators for future endeavors? (open-ended)

POTENTIAL PARTNERS	COUNT
Universities	9
Social justice groups (e.g., Black Lives Matter)	9
ACLU	8
Historical/archivists/genealogical groups	7
Business/industry	5
League of Women Voters	4
Unions	4
Librarians	4
Attorneys	4
Technology companies	4
Civic tech/engagement groups	3
Libertarians	3
Scientists	2
Hackers	2
Private investigators	2
WikiLeaks	1
Most frequent FOIA requesters	1
Innocence projects	1
Google	1
Religious organizations	1
Medical professionals	1
Real estate companies	1
Omidyar	1
Carter Center	1
Leagues of municipalities	1
Reclaim the Records	1
MLRC	1
Signers onto FOI amicus briefs	1
Political think tanks	1
High school educators	1
Government auditing agencies	1
Environmental groups	1
College newspapers	1
Criminal defense	1
Citizen bloggers	1
Data brokers	1



## 20. Finance

What potential organizations or people might be willing to financially support FOI efforts? (open-ended)

POTENTIAL FUNDERS	COUNT
Attorneys	6
Tech companies (Google, Facebook, Twitter)	5
ACLU	5
Universities	4
Knight Foundation	4
Donors and public	3
People afraid of Trump; Democratic groups	3
Omidyar	3
Unions	2
Hollywood/celebrities	2
Soros	2
Businesses passed over for contracts	2
Amazon	1
Warren Buffett	1
Libertarian think tanks	1
Ford Foundation	1
MacArthur Foundation	1
Shuttleworth Foundation	1
Poynter	1

## Prioritizing solutions

Please rate the following importance of the following activities toward improving FOI.

1. Not important at all
2. Somewhat important
3. Very important
4. Extremely important



SOLUTION	N	MEAN (1-4)	SD	NOT AT ALL IMPORTANT	SOMEWHAT IMPORTANT	VERY IMPORTANT	EXTREMELY IMPORTANT
<b>REQUIRING ATTORNEY FEE PROVISIONS</b>	178	3.31	0.897	4.5% (8)	15.7% (28)	23.6% (42)	56.2% (100)
<b>CUSTODIAN TRAINING</b>	183	3.30	0.827	3.3% (6)	13.7% (25)	32.8% (60)	50.3% (92)
<b>ADDING FINES / PUNISHMENT TO LAWS</b>	180	3.23	0.962	7.2% (13)	15.6% (28)	24.4% (44)	52.8% (95)
<b>ADVOCACY TO INCREASE FOI SUPPORT</b>	182	3.08	0.889	5.5% (10)	19.2% (35)	37.4% (68)	37.9% (69)
<b>ALTERNATIVES TO RESOLVING DISPUTES</b>	180	3.06	0.857	3.9% (7)	22.2% (40)	38.3% (69)	35.6% (64)
<b>MORE FUNDING FOR AGENCIES</b>	184	3.04	0.904	4.9% (9)	23.9% (44)	33.2% (61)	38.0% (70)
<b>TRACKING OF PROPOSED LEGISLATION</b>	182	3.02	0.857	2.7% (5)	27.5% (50)	35.2% (64)	34.6% (63)
<b>LITIGATORS TO SUE ON BEHALF</b>	183	3.00	0.839	2.7% (5)	26.8% (49)	38.3% (70)	32.2% (59)
<b>MORE FUNDING FOR FOI PROJECTS</b>	178	2.97	0.843	3.4% (6)	27.0% (48)	39.3% (70)	30.3% (54)
<b>FUNDS FOR SUING</b>	183	2.93	0.887	4.4% (8)	29.5% (54)	34.4% (63)	31.7% (58)
<b>COORDINATION OF FOI GROUPS</b>	179	2.88	0.895	5.6% (10)	29.6% (53)	35.8% (64)	29.1% (52)
<b>PUBLIC EDUCATION AND TRAINING</b>	184	2.86	0.882	5.4% (10)	30.4% (56)	37.0% (68)	27.2% (50)
<b>FOI EDUCATION IN SCHOOLS</b>	183	2.83	0.977	9.8% (18)	27.9% (51)	31.7% (58)	30.6% (56)
<b>REQUESTER TRAINING</b>	183	2.78	0.868	5.5% (10)	34.4% (63)	36.6% (67)	23.5% (43)
<b>LEGAL HOTLINES</b>	182	2.77	0.868	5.5% (10)	35.2% (64)	36.3% (66)	23.1% (42)
<b>LOBBYING AND CAMPAIGNING</b>	178	2.74	1.043	14.6% (26)	27.0% (48)	28.7% (51)	29.8% (53)
<b>DATABASE OF STATE FOI LAWS</b>	183	2.69	0.969	12.0% (22)	30.6% (56)	33.3% (61)	24.0% (44)
<b>LEGAL AID TO SUE PRO SE</b>	181	2.65	0.916	9.4% (17)	37.0% (67)	32.6% (59)	21.0% (38)
<b>FOI RESEARCH</b>	179	2.62	0.881	7.8% (14)	41.3% (74)	31.8% (57)	19.0% (34)
<b>CONTINUING SUNSHINE WEEK</b>	177	2.59	0.95	12.4% (22)	36.2% (64)	31.1% (55)	20.3% (36)
<b>RATING OF STATE FOI LAWS</b>	183	2.37	0.969	21.3% (39)	33.9% (62)	31.1% (57)	13.7% (25)



## OTHER SOLUTIONS

(Insert own idea)

OTHER SOLUTIONS	COUNT
Post records proactively and automatically online, easily searchable	46
Ombudsman/agency with ability to force disclosure	12
Revamp government database systems—no silos	9
Make noncompliance a criminal offense	8
Reduce exemptions	6
Teach more skills, particularly data, to custodians	5
Win the hearts and minds of custodians	4
More people to search government data and publish leads	3
Penalties of \$100 per day per record for violation	2
Expand MuckRock-type services online	2
Develop K-12 literacy curriculum	2
Make Congress/legislatures subject to FOI laws	1
Start campaign to make FOI a constitutional right	1
Require government to use easily found commercial software	1
Eliminate copy fees	1
Better video redaction technology	1
Every agency should have public terminal with printer	1
Make PACER free	1
Assistance for independent media to acquire/sue	1
Create complaint system for bad agencies that triggers review	1



## Your information

Now, a little information about you...

The following information will be kept confidential and used only for analysis  
No answers from this survey will be tied to you in any way.

### **22. Org**

Organization you work for (open-ended)

### **23. Title**

Job title (open-ended)

### **24. Field**

What type of field do you work in?

1. Journalism
2. FOI advocacy organization
3. Government
4. Other (please provide)

### **25. Belong**

What professional organizations do you belong to? (open-ended)

### **26. Email**

Email (optional, if you are willing to be contacted by the researcher for further elaboration): (open-ended)

### **27. Name**

Name (optional, if you are willing to be contacted by the researcher for further elaboration): (open ended)

Thanks again for taking time to provide your insights. It matters!



# ENDNOTES

- 1 "The natural progress of things is for liberty to yield, and government to gain ground."  
— Thomas Jefferson to Edward Carrington, Paris, May 27, 1788.
- 2 Many of the results of this study were consistent with previous research, including the biennial survey of FOI experts and journalists by the National Freedom of Information Coalition and Media Law Resource Center, March 2016, <http://www.nfoic.org/2015-biennial-open-government-survey-results-troubling>.
- 3 Dozens of FOI audits have been conducted since 1992, demonstrating widespread noncompliance with public record laws by state and local agencies. See a list provided by the National Freedom of Information Coalition at <http://www.nfoic.org/foi-audits>.
- 4 From the foreword of the John S. and James L. Knight Foundation Statement of Strategy, December 2016, <http://www.knightfoundation.org/statement-of-strategy>. Also, see Vincent Blasi, "The Checking Value in First Amendment Theory," *Law & Social Inquiry* 2, July 1977: 521-649; and Alexander Meiklejohn, "Free Speech and Its Relation to Self-Government" (New York: Harper, 1948).
- 5 See, for example, the San Francisco Sunshine Ordinance, [http://library.amlegal.com/nxt/gateway.dll/California/administrative/chapter67thesanfranciscosunshineordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$anc=JD\\_Chapter67](http://library.amlegal.com/nxt/gateway.dll/California/administrative/chapter67thesanfranciscosunshineordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$anc=JD_Chapter67), which states, "The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information." Also, many state public record laws, pushed by Common Cause in the early 1970s, include this preamble: "The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created." (Washington state: <http://app.leg.wa.gov/RCW/default.aspx?cite=42.56.030>.)
- 6 A meta-analysis of FOI research over the past 25 years indicates that government transparency increases civic participation, improves financial management and reduces corruption (Maria Cucciniello, Gregory A. Porumbescu and Stephan Grimmelikhuijsen, "25 Years of Transparency Research: Evidence and Future Directions," *Public Administration Review* (77)1, 2017: 131-134 (found at <http://onlinelibrary.wiley.com/doi/10.1111/puar.2017.77.issue-1/issuetoc>). See, for example, open publication of food safety inspections decreases consumer complaints (Barbara A. Almanza, Joseph Ismail, and Juline E. Mills, "The Impact of Publishing Foodservice Inspection Scores," *Journal of Foodservice Business Research* 5, 2002: 45-62); requiring disclosure of drinking water contaminants reduces health violations in Massachusetts (Lori S. Bennear and Sheila M. Olmstead, "The Impacts of the 'Right to Know': Information Disclosure and the Violation of Drinking Water Standards," *Journal of Environmental Economics and Management* 56(2), 2008: 117-130).
- 7 See, for example, the "FOIA Files" database of more than 700 stories based on the Freedom of Information Act, compiled by the Sunshine in Government Initiative (now called News Media for Open Government, <http://foropengov.org/wordpress/>), at <http://sunshineingovernment.org/wordpress/the-foia-files/>. Also, a 2001 study by the Society of Professional Journalists of 4,000 news articles indicated that 19 percent included information from public records; see "Open Doors Survey," <http://www.spj.org/opendoors5.asp>.
- 8 For example, the National Security Archives found that even though only 40 percent of federal agencies comply with E-FOIA, the FBI, departments of Energy and State, and Nuclear Regulatory Commission did a good job posting records online (see <http://nsarchive.gwu.edu/NSAEBB/NSAEBB505/>). Also, the Center for Effective Government found in 2015 that 10 of 15 federal agencies received failing grades in FOIA but that eight agencies had improved their performance from previous years (see <http://www.foreffectivegov.org/access-to-information-scorecard-2015>).



- 9 The FOIA Improvement Act of 2016 codified into law the presumption that government records are public unless there is a reason to make them secret. It also called for a single online request portal, limited to 25 years the time records could be secret under the deliberative discussions Exemption 5, strengthened the Office of Government Information Services ombuds and improved reporting of FOIA performance by agencies.
- 10 Studies show that the Obama administration set a record in the rate requesters were denied information or told that it doesn't exist—77 percent of the time. See Ted Bridis and Jack Gillum, "When It Comes to Providing Government Records the Public Asks to See, the Obama Administration Has a Hard Time Finding Them," *The Associated Press*, March 18, 2016. Also, see Ben Wasike, "FoIA in the Age of 'Open.Gov'" to *Government Information Quarterly* 33(3), July 2016: 417-426 (<http://www.sciencedirect.com/science/article/pii/S0740624X16300491>); Jack Gillum and Ted Bridis, "FOIA Requests Being Denied More Due to Security Reasons Than Any Time Since Obama Took Office," *The Associated Press*, March 11, 2013; and Martin E. Halstuk, Benjamin W. Cramer and Michael D. Todd, "Tipping the Scales: How the U.S. Supreme Court Eviscerated Freedom of Information in Favor of Privacy," in "Transparency 2.0: Digital Data and Privacy in a Wired World," eds. Charles N. Davis and David Cuillier (New York: Peter Lang Publishing, 2014).
- 11 See Carolyn Carlson, David Cuillier and Lindsey Tulkoff, "Mediated Access: Journalists' Perceptions of Federal Public Information Officer Media Control," March 12, 2012, <http://spj.org/pdf/reporters-survey-on-federal-PAOs.pdf>; "Pressed for Time: U.S. Journalists' Use of Public Records During Economic Crisis," presented to the Global Conference on Transparency Research, Newark, N.J., May 2011; Anne Diffenderffer and Karen Retzer, "Reporters' Rights and Access Survey," *Chicago Headline Club*, April 2011, found that 41 percent of Chicago journalists said their experience with FOIA is worse than with state/local records, 37 percent said it is the same, and 22 percent said better.
- 12 Surveyed community journalists reported increased denials and more difficulty in getting public records, according to David Cuillier, "Pressed for Time: U.S. Journalists' Use of Public Records During Economic Crisis," presented to the Global Conference on Transparency Research, Newark, N.J., May 2011.
- 13 "More than 50 Journalism Groups Again Urge President Obama to Stop Excessive Controls on Public Information," *Society of Professional Journalists*, Aug. 11, 2015, <http://www.spj.org/news.asp?REF=1368>.
- 14 "Journalists Ask White House for Commitment to Openness," *Society of Professional Journalists*, Dec. 15, 2015, <http://www.spj.org/news.asp?REF=1402>.
- 15 See Access Info Europe and the Centre for Law and Democracy, "Global Right to Information Rating," [www.rti-rating.org/country-data](http://www.rti-rating.org/country-data). Also, for a comparison showing how countries should not use the U.S. as a model for FOIA, see Stephen Lambie, "FoI as a United States' Foreign Policy Tool: A Carrot and Stick Approach," *Freedom of Information Review* 105, June 2003: 38-43.
- 16 See a comparison of access at the state and federal levels before FOIA was passed and today, in David Cuillier, "The People's Right to Know: Comparing Harold L. Cross' Pre-FOIA World to Post-FOIA Today," *Communication Law & Policy* 21(4), 2016: 433-463.
- 17 Lindita Camaj, "Governments' Uses and Misuses of Freedom of Information Laws in Emerging European Democracies: FOI Laws' Impact on News Agenda-Building in Albania, Kosovo, and Montenegro," *Journalism & Mass Communication Quarterly* 93(4), 2016: 923-945.
- 18 See Margaret Kwoka, "FOIA, Inc.," *Duke Law Journal* 65, 2016: 1361-1437.
- 19 James T. Hamilton, "Democracy's Detectives: The Economics of Investigative Journalism" (Cambridge, Mass.: Harvard University Press, 2016). Research also indicates that journalists were beginning to pursue public records and cover public meetings less even before the recession. See Stephen Lacy, Charles St. Cyr and Miron Varouhakis, "Newspaper Reporters' Perception of City Government Coverage in 1997, 2007," *Newspaper Research Journal* 29(4), 2008: 66-73; and John C. Besley and M. Chris Roberts, "Cuts in Newspaper Staffs Change Meeting Coverage," *Newspaper Research Journal* 31(3), 2010: 22-35.



- 20 See “News Organizations’ Ability to Champion First Amendment Rights Is Slipping, Survey of Leading Editors finds,” American Society of News Editors, <http://www.knightfoundation.org/press/releases/news-organizations-ability-champion-first-amendmen>. Also see David Cuillier, “Pressed for Time,” 2011 (finding that half of U.S. journalists have never submitted a federal FOIA request, a quarter said they don’t have time, a third that they don’t know how, and a third perceive that their companies are less likely to sue for records than in past two years); National Freedom of Information Coalition, “New Knight Foundation Grant Allows State Groups to Take Up Freedom of Information Lawsuits,” January 2010, <https://journalism.missouri.edu/2010/01/knight-foundation-helps-state-groups-take-up-freedom-of-information-lawsuits/>; and Media Law Research Center–National Freedom of Information Coalition Open Government Survey, 2016, <http://www.nfoic.org/2015-biennial-open-government-survey-results-troubling>.
- 21 See “Glass Half Full” survey released March 14, 2011, by the National Security Archive, <http://nsarchive.gwu.edu/NSAEBB/NSAEBB338/>.
- 22 See David Cuillier, “The Public’s Concern for Privacy Invasion and Its Relationship to Support for Press Access to Government Records,” *Newspaper Research Journal* 25(4), 2004: 95-103.
- 23 A Gallup poll in September 2016 showed that trust in the media dropped to 32 percent, down from 40 percent the previous year and from 72 percent in 1976. Republicans’ trust in the media is even lower—at 14 percent—down from 32 percent a year ago. See <http://www.gallup.com/poll/195542/americans-trust-mass-media-sinks-new-low.aspx>.
- 24 For example, national Sunshine Week ([www.sunshineweek.org](http://www.sunshineweek.org)) and 1 for All (<https://1forallnet.wordpress.com/>) have not developed sustainable, diverse revenue streams.
- 25 Factors, for example, related to support for FOI include civic engagement (David Cuillier, “Access Attitudes: A Social Learning Approach to Examining Community Engagement and Support for Press Access to Government Records,” *Journalism and Mass Communication Quarterly* 85(3), 2008: 549-576); internet use (David Cuillier and Suzanne J. Piotrowski, “Internet Information Seeking and Its Relation to Support for Access to Government Records,” *Government Information Quarterly* 26(3), 2009: 441-449); and skepticism (David Cuillier and Bruce Pinkleton, “Suspicion and Secrecy: Political Attitudes and Their Relationship to Support for Freedom of Information,” *Communication Law and Policy* 16(3), 2011: 227-254); and can be even affected by thoughts of death (David Cuillier, Blythe Duell and Jeffrey Joireman, “FOI Friction: The Thought of Death, National Security Values, and Polarization of Attitudes Toward Freedom of Information,” *Open Government* 5(1), 2009).
- 26 See, for example, <http://www.knightfoundation.org/future-first-amendment-survey> and <http://www.knightfoundation.org/articles/news-high-schools-digital-media-plus-teaching-equals-support-freedom>.
- 27 See David Cuillier, “Pressed for Time,” 2011. Also see “News Organizations’ Ability to Champion First Amendment Rights Is Slipping, Survey of Leading Editors Finds,” by the American Society of News Editors, <http://www.knightfoundation.org/press/releases/news-organizations-ability-champion-first-amendmen>.
- 28 New Voices USA website at <http://newvoicesus.com/>
- 29 As a result, several major judgments in Washington state have caused agencies, particularly smaller ones, to take the law seriously. In 2007 the state Department of Corrections had to pay \$341,000 in attorney fees and \$200,000 in penalties, and in 2016 the town of Mesa, population 500, had to pay \$353,000, although the judge lowered the penalties to \$175,000 so the town would not go bankrupt.
- 30 A. Jay Wagner, “A Most Essential Principle: Use and Implementation of the Freedom of Information Act, 1975-2014” (dissertation, 2016, Indiana University).
- 31 See the list of media litigants reported by Syracuse University’s Transactional Records Access Clearinghouse at <http://foiaproject.org/plaintiff-media-list/>.
- 32 For links to FOI-related videos posted around the world, see <http://www.freedominfo.org/resources/foi-videos/>.



- 33 See David Cuillier, "Access Attitudes: A Social Learning Approach to Examining Community Engagement and Support for Press Access to Government Records," *Journalism and Mass Communication Quarterly*, 85(3), 2008: 549-576.
- 34 The Accrediting Council on Education in Journalism and Mass Communications lists one professional value and competency as: "Understand and apply the principles and laws of freedom of speech and press for the country in which the institution that invites ACEJMC is located, as well as receive instruction in and understand the range of systems of freedom of expression around the world, including the right to dissent, to monitor and criticize power, and to assemble and petition for redress of grievances"; see <http://journalism.ku.edu/acejmc-professional-values-competencies>.
- 35 See <http://www.rcfp.org/journalists-lawyers-ngos-mobilize-protect-freedom-press>.
- 36 In full disclosure, the author of this study has been a member of the NFOIC board since fall 2016.
- 37 See, for example, the state constitutions of Florida (Section 24, <http://www.leg.state.fl.us/statutes/index.cfm?submenu=3#A1S24>) and Montana (Article II, Section 9, <http://leg.mt.gov/bills/mca/Constitution/II/9.htm>), which include a right to access government information. Also, see a variety of nations that have integrated that right into their constitutions at <http://www.freedominfo.org/>.
- 38 Harold L. Cross, "The People's Right to Know: Legal Access to Public Records and Proceedings" (New York: Columbia University Press, 1953).
- 39 Article 19, specifically: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." <http://www.un.org/en/universal-declaration-human-rights/>.
- 40 "Last Words: The Return of Anders Chydenius," by Siiri Viljakka, <http://www.painovapaus250.fi/en/news/last-words>. Note that the comic book focuses more on the principles of press freedom and liberty than on FOI.

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