

# G<sup>★</sup>overnment Gold Mine

The Freedom of Information Act allows you access to an array of documents to help you research your next story. Here, *WD's* legal expert tells you how to get them. **BY AMY COOK**

When researching stories, we've been spoiled by the Internet. But even Google can't provide all the answers, and there's that nagging reliability problem—is your “expert source” actually just a 14-year-old with time on his hands?

Enter FOIA. The federal Freedom of Information Act allows the public to obtain information the government collects by making certain records available to those who ask. Every state has a version of the law—often referred to as “Sunshine” laws—covering open meetings and records for many state government activities.

Most frequently used by journalists, writers of all stripes can find these records useful, whether to confirm other sources or simply to generate story ideas. You can find information on consumer product safety, immigration, the environment, prisons, health care,

small business and more. Here are a few things FOIA and state open records laws have helped uncover recently:

- radiation experiments in New Mexico
- a New York police department's use of force
- what the government knew about an airline's safety before a major crash
- medical malpractice cases in New Jersey
- investigations into the Columbine School shootings
- the riskiest workplaces.

Such findings could provide the basis for

*We the People*  
insure domestic Tranquility, provide for the common defence  
and our Posterity, do ordain and establish this Constitution  
Article 1  
Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and  
House of Representatives.  
Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and  
the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.  
Section 3. The Senate shall be composed of two Senators from each State, chosen by the Electors in each State for a Term of Years, and  
each shall hold his Office for the Term of Years, and shall be sworn or affirmed before he shall enter on his Office, and the Electors in each State  
shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.  
Section 4. The Times, Places and Manner of holding the Elections for Senators and Representatives, shall be prescribed in each State  
by the Legislature thereof; but the Congress may at any time by Law alter or change the Times, Places or Manner of holding such Elections,  
provided they make no Change in the Substance thereof.  
Section 5. The Congress shall assemble every second Year on the first Monday in December, but they may by Law alter the Day of the  
Assembly.  
Section 6. The Congress shall hold their Sessions at the City of Washington, but they may at any time by Law alter the same.  
Section 7. All bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with  
amendments to any Bill as they shall think proper.  
Section 8. The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to regulate Commerce with foreign  
States, to borrow Money on the Credit of the United States, to define and punish Offences against the Law of Nations, to define and  
punish Offences against the Law of the United States, to define and punish Offences on the high Seas, and on the Land near the  
Coasts of the United States, to regulate the Coinage, Weights and Measures, to establish Post Offices and Post Roads, to promote  
the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their  
respective Writings and Discoveries, to grant Patents and Copyrights, to organize and regulate the Militia, to provide for calling  
out the Militia to execute the Laws of the Union, to suppress Insurrections and to repel Invasions, to provide for the better  
Regulation of the Commerce among the States, to regulate the Commerce with foreign Nations, to regulate the Commerce and  
Fishing with the Indians, to exercise exclusive Legislation over all Districts ceded to the United States by other States, to exercise  
exclusive Legislation over all Places purchased by the Consent of the Legislature of the State in which they shall be situated, to  
exercise all the Powers herein granted, and to do all Things which shall be necessary and proper to carry into Execution the  
aforegoing Powers, and all other Powers vested by this Constitution in the Government of the United States.

in-depth investigative reporting, creative nonfiction essays or books, or even a great concept for your next thriller.

### **MAKING A REQUEST**

If you don't already know which agency might have the records you're looking for, check the descriptions of various agencies in the United States Government Organization Manual (found in most libraries). Once you know which agency you want to contact, write a letter to its FOIA office, being as specific as possible about the records you want. What qualifies as a "record"? The term includes all types of documentary information, such as papers, reports, letters, films, computer tapes, photographs and sound recordings. You can try the informal route and call the office first, but only a written letter creates a legal obligation for them to act.

Your letter should:

- be addressed to the FOIA officer
- specify documents being requested, if known
- note why you're entitled to a fee waiver, if relevant (more on that later)
- state the amount you're willing to pay if you're not entitled to a fee waiver and ask that you be notified ahead of time if they expect charges to exceed that amount.

### **FEES AND WAIVERS**

There may be fees for searching and photocopying. But "noncommercial" requesters from educational or scientific institutions, as well as members of the news media, pay no search fees and receive 100 pages of free duplication. So a staff writer should have no problem receiving the waiver. If you're a freelancer, you'll need to show that the information will be used in a work that has a reasonable likelihood of being published. Book authors have also been designated as members of the news media in certain circumstances.

There's also a fee waiver available if the release of the information is in the public interest because it will contribute significantly to public understanding of government operations and activities.

### **OFF-LIMITS INFO**

You knew the government wasn't going to give up all its secrets without a fight, right? The laws have plenty of exemptions. FOIA doesn't apply to Congress, the federal courts or the Executive Office staff, such as the White House Chief of Staff and others whose sole function is to advise and assist the president. There

are certain categories of information, such as those relating to national security or business information (like trade secrets), that agencies are permitted to withhold.

FOIA can butt heads with privacy laws, but as with other invasion of privacy claims, newsworthiness can take precedence. For example, when a naval commander in charge of a vessel that collided with a Saudi Arabian merchant ship claimed the Navy had violated his rights under the Privacy Act by disseminating information from his personnel file, a court noted that although there's a privacy exemption to the FOIA, it can't be invoked if the public interest in disclosure outweighs personal privacy interests.

### **GOVERNMENT RESPONSE**

Although the statute says that the government has 20 days to respond to your request—either with the requested materials or with a denial—it can be difficult to get agencies to meet those deadlines. Some of the more "popular" offices (FBI, CIA and the departments of State and Justice) have backlogs of several years. If you can show a "compelling need" for the information, you may be eligible for expedited review. Perhaps there's an urgency to inform the public about a specific government activity, or, if you don't get the requested documents right away, it may pose a threat to an individual's life or safety. In cases like these, the agency must grant or deny your request within 10 days.

If you don't get a response within a reasonable time, first try getting in contact with the agency to check the status of your request. See if you can further tailor your request so the records are easier to obtain and get them to commit to a release date.

If you're still not getting anywhere, or if the request is partially or fully denied, you can file an appeal with the department head. Describe why you think the denial was improper, presenting arguments as to why the requested documents shouldn't fall into any exemptions the agency may have cited. As a last resort, you can take your case to court, where the burden will be on the government to show why it withheld the information. Federal courts allow non-lawyers to file suit against the government, and sometimes that alone will compel the government to release the information. **WD**

**Amy Cook, a contributing editor for *Writer's Digest*, is an attorney and literary agent in Chicago.**