

Combating Government Secrecy Through Freedom of Information

FOIA

A Best Practices Guide to FOIA Collaboration

About Open the Government (OTG)

Open the Government is an inclusive, nonpartisan coalition that works to strengthen our democracy and empower the public by advancing policies that create a more open, accountable, and responsive government.

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I. INTRODUCTION



The right to information is a powerful counterweight to government secrecy, vital to protecting the public from government overreach, waste, and abuse. For over 50 years, the federal law that has secured this right in the United States is the Freedom of Information Act (FOIA) – used by journalists, advocates, and the public to shine light on government actions carried out in our name, but without our knowledge. FOIA is a pivotal gateway to government transparency and is used extensively by organizations in the Open the Government (OTG) coalition to fuel advocacy campaigns and advance openness policies.

As new secrecy challenges have emerged with the advent of the Trump Administration,¹ public interest groups are increasingly looking to FOIA as an avenue to access government information.² FOIA requesters, however, face constant obstacles that include long delays, abused FOIA exemptions, and heavily censored documents. There are myriad ways agencies impede access to information, and understanding the contours of the law can help overcome these hurdles. FOIA works best when requesters are not only armed with knowledge of the inner-workings of FOIA, but also look towards collaboration as an avenue to overcoming the many challenges to access.

The growth in FOIA use provides new opportunities for cross-sector coordination on openness initiatives. Collaboration helps maximize the power of the law by linking experts doing FOIA work across policy areas to facilitate more strategic and effective requesting, resulting in stronger demands for information and greater overall transparency. Coordination is also critical to reduce redundancy and excess requests that bog down FOIA offices, and to ensure requesters exhaust all avenues to obtain the desired information and choose strategically when bringing FOIA lawsuits.

OTG brings together groups to facilitate coordination between advocates and open government experts on ways to increase access to information and best utilize FOIA.³ This guide highlights successful collaborative approaches to FOIA identified during coalition strategy meetings and roundtable discussions and provides recommendations to help plan productive FOIA efforts.

The Guide

The guide presents a collection of case studies of FOIA initiatives that have led to important information disclosures. The examples identify best practices in collaborative FOIA efforts and investigative work involving openness advocates, journalists, litigators and grassroots organizations working on a range of

policy issues. Recommendations based on the lessons learned from the collection of successful FOIA efforts follow the case studies.⁴

This study emphasizes the need for additional examples of successful FOIA cases to help guide FOIA work. The project is being coordinated with the Reporters Committee for Freedom of the Press, and the guide will be published on RCFP's [FOIA Wiki site](#), which receives contributions from the FOIA Project, MuckRock, National Security Archive, FOIA Mapper, and the general public. By adding the guide to the FOIA Wiki, the goal is to provide a resource for the public to add additional coordinated FOIA efforts that stand out as notable successes, identify trends and share lessons learned.

II. FOIA SUCCESS STORIES

1. Collaborating on FOIA investigations to uncover secret lobbying

The logo for the Freedom of the Press Foundation, featuring the words "FREEDOM OF THE PRESS" stacked vertically in white, bold, sans-serif font, with "FOUNDATION" below them in a smaller font, all set against a black background.

Coordinated FOIA work between transparency advocates and experienced journalists can expose documents that increase public awareness and help advance transparency reforms. The Freedom of the Press Foundation (FPF) and journalist Jason Leopold joined forces in 2016 to file targeted FOIAs and litigate to obtain Justice Department records that revealed the Obama Administration's secret efforts to block FOIA legislation. The case provides lessons on ways transparency groups can benefit from working closely with FOIA journalists to identify and obtain records that enhance advocacy goals.

In 2015, FPF filed a FOIA for evidence of secret lobbying after receiving a tip that the Obama administration had opposed a FOIA reform bill that was on the verge of passing but died in December of 2014. After receiving no records from the Justice Department, the group filed a lawsuit in to force the Department to process the request.⁵

As a result of the lawsuit, FPF received a six-page memo and email correspondence confirming suspicions of the Justice Department's efforts to undermine the reforms.⁶ FPF's Executive Director Trevor Timm worked with Leopold, whose own FOIA requests yielded documents demonstrating that the SEC and FTC also meddled in reform efforts. The documents received widespread attention after Leopold published a piece for VICE News in March 2016, as Congress was again debating a new FOIA reform bill, the FOIA Improvement Act of 2016.⁷

The publication of the records, timed to correspond to that year's Sunshine Week events, raised public awareness of the urgent need for FOIA reforms and helped in the final push for the passage and signing of the FOIA bill. The reforms were a major transparency victory, enshrining provisions that advocates had been promoting for a decade and significantly advancing the public's right to know.⁸

FOIA Tip: Collaborate with investigative journalists on FOIA efforts to break stories that raise public awareness and fuel advocacy campaigns.

2. Partnering with FOIA litigators to unveil government monitoring of protests



FOIA planning between groups with the capacity to litigate and subject matter experts with grassroots reach can lead to positive transparency gains. Color Of Change (COC) is a grassroots organization that works directly with communities impacted by government surveillance practices, and the Center for Constitutional Rights (CCR) has years of experience with FOIA litigation. Together, they were able to identify relevant records and sustain litigation to secure the release of evidence of secret government monitoring of protests.

The case began in July 2016, when COC and CCR filed a set of FOIA requests with the Department of Homeland Security (DHS) and the Federal Bureau of Investigation (FBI) for records related to government monitoring of Black Lives Matter (BLM) protests and organizers.⁹ The groups prepared for litigation early on in the process, under the assumption that the DHS and FBI would deny access or heavily redact the records sought. After receiving no documents from either agency, the groups filed a lawsuit in October 2016, arguing that the information requested was of vital public importance.¹⁰

The lawsuit was cited widely in the press, and led to the release of documents on government monitoring of Black Lives Matter protests, including internal emails and field reports that were circulated among law enforcement agencies in 2016.¹¹ The records provide important primary source documentation that have helped increase public awareness about the civil rights and privacy threats stemming from government monitoring of organizing and dissent.

FOIA Tip: Coordinate with groups that litigate before filing a request for sensitive information if the case is likely to require a challenge in court.

3. Planning FOIA litigation to expose secret influence of private contractors



Another case involving the Center for Constitutional Rights shows how early planning between subject matter experts and attorneys on FOIA litigation can bring about important court decisions and lay bare the influence of private companies in policymaking. In this case, Detention Watch Network (DWN) worked with CCR to prepare for litigation early, predicting that they would need to challenge the government's use of the "trade secrets" exemption to block information from release. The early planning helped prepare for the unusual intervention of private contractors in the case, and contributed to a landmark court decision opening up avenues to push for greater overall transparency in government contracting.

In November 2013, DWN and CCR filed a joint FOIA request with DHS and Immigration and Customs Enforcement (ICE) for documents relating to the “detention bed mandate,” a quota set by Congress that requires ICE to maintain 34,000 beds in immigration detention centers at any given time.¹² The request asked for internal documents to better understand the impact of the quota on detention policy, including agreements with contractors and communications between private companies and government officials.



After receiving no documents in response to the request, the groups filed a lawsuit.¹³ The court ruled that the details of all government contracts with private detention companies were subject to public release under the FOIA, and the government decided not to appeal the decision. However, the private prison companies CCA and GEO Group then intervened to block the release of the responsive records.

The Supreme Court denied hearing the case in October 2017, rejecting the private contractors’ unusual attempt to keep the records secret after the government had acceded to the lower court’s ruling.¹⁴ The case led to the release of documents revealing how companies such as CCA and GEO Group reap enormous benefits from the bed quota, and influence policies that result in higher numbers of arrests and detentions of immigrants. The final decision marked an important gain for groups advocating against the privatization of immigration detention, and a major advancement for broader transparency efforts related to private government contracting.

4. Working with subject matter experts and journalists to reveal conflicts of interests

American Oversight coordinates on FOIA initiatives with subject matter experts and journalists in ways that exemplify good FOIA practice. As part of their investigations into harmful chemicals used by the EPA across the country, for example, the group collaborates with the Environmental Working Group (EWG), bringing together its FOIA and litigation skills with the subject matter expertise of EWG. The groups are currently pursuing a FOIA lawsuit for documents regarding EPA Administrator Scott Pruitt’s decision to overrule agency scientists and continue the use of neurotoxic pesticides.¹⁵

American Oversight has also worked with *New York Times* journalists on efforts to raise public awareness about Pruitt’s relationships to industry representatives. The group sued the EPA in June 2017 to force the agency to comply with FOIA requests for copies of Pruitt’s calendars from February through May 2017, and then worked with NYT journalist Eric Lipton to analyze and draw out conclusions from the released documents. The effort sparked a front-page story that exposed how Pruitt’s meeting schedule significantly favored energy and chemical industry executives and lobbyists.¹⁶

5. Targeting multiple agencies to uncover military involvement in domestic surveillance



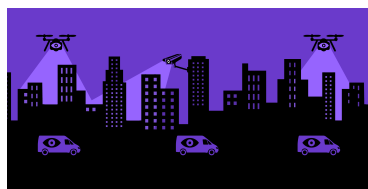
Researching the various agencies that could be in possession of desired information is an important step in the FOIA process. Targeting multiple agencies with the same FOIA can help the requester get the information they are looking for, sometimes unearthing records that shed light on previously unknown government monitoring practices.

Human Rights Watch researcher Sarah St. Vincent found through FOIA work that the Air Force had documents in its archives on domestic surveillance of Americans by the military. The revelations came after St. Vincent filed [FOIA requests](#) with twenty-two federal agencies, including with other Pentagon components and the Department of Homeland Security (DHS), seeking records related to the government's use of intelligence surveillance laws for counter-narcotics or immigration enforcement purposes. The requests asked for legal, policy, and other documents relating to Section 702 of the Foreign Intelligence Surveillance Act (FISA), and Executive Order 12333, laws the government uses as the basis for large-scale U.S. surveillance programs that affect people in the United States as well as Americans abroad.¹⁷

The FOIAs led to the [disclosure of records](#) from the Air Force revealing for the first time a Defense Department policy that apparently authorizes warrantless monitoring of U.S. citizens and green-card holders.¹⁸ HRW featured the documents in its reporting, and the revelations have played a central role in raising public awareness, and fueling public advocacy campaigns aimed at enhancing oversight and accountability for warrantless surveillance programs.¹⁹

FOIA Tip: Do background research to find out what agencies could be in possession of the desired records, and to determine if other organizations or individuals are filing similar requests.

6. Designing collaborative FOIA platforms to enhance transparency at the community level



The Electronic Frontier Foundation (EFF) and MuckRock have spearheaded vanguard initiatives that foster greater information access throughout the country. The groups provide innovative platforms for the public to file their own information requests, and obtain records needed to better understand how law enforcement policies are being implemented in local communities. The efforts exemplify ways groups with national reach can promote widespread use of state and local open records laws to access information that is not available through other channels.

EFF's "[Street-Level Surveillance](#)" documentation project is enhancing transparency relating to surveillance technologies increasingly used by law enforcement.²⁰ As part of the project, EFF and MuckRock created a crowd sourcing [site](#) that provides a template for anyone to file requests to get information about local law enforcement surveillance practices, such as biometrics data collection programs.²¹ The information released through this project has been pivotal in community efforts to hold local law enforcement accountable for public expenses and incidents of police abuse.

FOIA Tip: Use FOIA platforms that provide samples of FOIAs already filed to shape your own petitions for records from federal and state agencies.

MuckRock has also partnered directly with local groups, such as the [Lucy Parson Labs](#) - a Chicago-based collaboration between data scientists, transparency activists and technologies - to use [FOIA to investigate](#) the use of surveillance equipment by the Chicago Police Department.²² This collaboration has also fueled transparency and accountability efforts related to the use of new surveillance

devices by law enforcement, particularly in cases where these devices have been used to target social organizing and protests.

7. Lobbying in coalitions to obtain records on government dissent

FOIA success sometimes requires working in coalitions to advocate for changes to the law. The National Security Archive (the Archive) did this successfully, joining forces with a coalition of open government advocates pushing for FOIA reforms in 2016 to limit use of certain exemptions by agencies keeping important historical records under seal. It was only after the reforms passed into law that the Archive was able to get the documents it had sought under FOIA for two decades.

The Archive first submitted a request in 1997 to the Department of State for records on the "Dissent Channel," an informal means of communication established during the Vietnam War for State Department employees to express their dissent over certain policies. The State Department denied access under Exemption 5 of the FOIA, which allows agencies to withhold certain categories of privileged information, including deliberative records. The Archive submitted the request again in 2016, this time taking advantage of the new provision that advocates fought to include in the FOIA Improvement Act that prohibited the use of Exemption 5 to claim the deliberative process privilege for records more than 25 years old. The Archive filed [suit](#) in April 2017 to compel the agency to process and finally release the requested records.²³

The judge ruled in the Archive's favor, leading to the disclosure of files that document a long trend of formal critiques of U.S. policy by State Department Foreign Service Officers. The records provide important insight into the historical significance of the Dissent Channel, which made [headlines](#) when it

was reactivated in January 2017, when over 1,000 diplomats signed a memo opposing the White House “Travel Ban,” that suspended immigration from seven majority-Muslim countries. ²⁴

8. Using open records laws at the state level to strengthen accountability



State and local transparency laws can be effective tools when federal agencies keep information under wraps. Journalists with *E&E News* rely on state public records laws to break stories about EPA nominees²⁵ and on media access restrictions imposed by the EPA when Administrator Scott Pruitt announces controversial policy changes.²⁶ *Washington Post* journalists have also used state-based laws to develop a database on police accountability, documenting cases of systematic police

rehiring after being fired for misconduct.²⁷

Organizations that focus on federal FOIA action are also using local open records laws as part of their investigative work. In one case, Citizens for Responsibility and Ethics in Washington (CREW) filed a request with the Secret Service in October 2017 for information on how much Vice President Mike Pence’s trip to Indianapolis cost taxpayers, when he traveled there to watch and then leave a football game in protest. While waiting for the Secret Service to respond, CREW’s Chief FOIA Counsel Anne Weismann filed an open records request with the Indianapolis Metropolitan Police Department for documentation on the cost of Pence’s visit to the city to attend the football game. In response, CREW quickly received records from the Indianapolis MPD, which showed that the trip cost more than \$14,000 in local police expenses. The records generated media attention and demonstrated how local and state open records laws can be powerful tools to obtain information that the federal government often withholds from the public.

FOIA Tip: Use state and local open records laws to pry open information that the federal government does not possess or shields from public view.

9. Long term FOIA investigations divulge government waste & abuse

Long-term investigative work and institutional knowledge of government policy fosters positive FOIA results. Because of their decades of experience, POGO investigators know how to target records with information on potential conflicts of interest that can be relevant years down the road. POGO’s long-term investigative prowess has led to FOIA disclosures exposing waste and abuse, such as army contractors hiding deadly chemical risks, abuses by contractors providing services at torture prisons, and more.

In 2017, POGO's FOIA work helped thwart the confirmation of a nominee with a questionable past. As part of its investigations into FEMA housing contracts after Hurricane Katrina, POGO initially filed a FOIA in 2006 for records relating to the former head of FEMA's Recovery Division, Daniel Craig, including communication between Craig and companies that received \$500 million in non-competitive contracts. Years later, POGO received a partial response from DHS and other records were sent to the DHS Office of the Inspector General (IG), which denied access to certain records, citing personal privacy and law enforcement exemptions.²⁸

POGO appealed the decision, and 11 years after the initial request, the DHS IG finally released an investigative report to POGO, providing insight into Craig's employment negotiations with two of the four FEMA housing contractors, one of which was a client of Craig's post-FEMA employer. Around the same time as the IG release of that report, Craig's name also re-surfaced as President Trump's nominee for FEMA Deputy Administrator. Craig quickly withdrew his nomination in September 2017, however, after POGO and NBC started asking questions based on findings from the FOIA records and government officials became aware of Craig's questionable past.²⁹

10. Using foreign information laws to access files on human rights abuses



International collaboration with open government groups and journalists can lead to the release of information on U.S. diplomacy and national security policies. Partnering with groups in other countries that have strong freedom of information laws opens up avenues to access information blocked by U.S. agencies. The result can lead to greater access to files relevant to better understanding the impact of U.S. assistance to governments responsible for human rights abuses, in some cases, in violation of U.S. laws.³⁰

The National Security Archive regularly partners with open government organizations in other countries to coordinate use of information laws to gain access to information about issues relevant to advocacy efforts across borders. The Archive has worked with groups in Mexico, for example, to request records relating to U.S. security assistance and human rights cases.³¹ The coordinated requests in both countries have led to the disclosure of records leading to press attention in the U.S. and Mexico, and supporting the advocacy efforts of human rights defenders and reform advocates in both countries.³²

FOIA Tip: Partner with groups in other countries using access laws to get information that U.S. agencies keep secret.

III. CONCLUSION & RECOMMENDATIONS

Conclusion

Successful FOIA initiatives take place in an ecosystem encompassing an array of actors working to raise public awareness and promote government accountability. While the outcome of every FOIA case depends on multiple factors, and there is no magic template for filing requests that guarantees success, there are notable patterns that emerge when examining success stories that can help guide a requester in their approach to FOIA.

One of the primary lessons that emerge out of this study is that successful FOIA work is greatly enhanced through collaboration, which includes: coordinating with journalists to share documents and break stories; connecting subject matter experts with FOIA specialists; consulting with FOIA litigators; planning joint advocacy strategies around FOIA requests, and; working with a coalition to change the law. As the public and advocacy community relies more on FOIA, collaboration can lead to new relationships between openness advocates working on various issue areas and amplify collective demands for transparency and accountability. Increasing coordination is also important to help consolidate requests to reduce FOIA redundancy and agency backlogs.³³

The cases examined in this guide represent a tiny fraction of the broad universe of successful FOIA initiatives, and understanding new lessons requires a much larger sample size and regular updates with new cases. By hosting this guide on the Reporters Committee for Freedom of the Press FOIA Wiki site, the goal is to encourage FOIA experts and the public to add new and emerging cases that document additional lessons to help requesters map out effective strategies in their FOIA work.

Recommendations

FOIA Fundamentals³⁴

1. Do the background research



Before filing a FOIA, it is critical to do thorough background research to be able to develop a well-crafted request and to prepare to respond to FOIA offices if asked to provide additional information or narrow a request. Reaching out to other researchers, investigators, and FOIA specialists working on the same issue is an important step in the FOIA process, in order to understand what information is already available and to prepare for an administrative appeal when it is time to challenge agency denials.

2. Locate the right agency

Search the agency website for the FOIA office contact. Agencies accept requests by email, fax or mail. The Justice Department's [FOIA.gov](https://www.foia.gov) website provides directions on how to file a request, includes a portal to file directly with certain agencies, and directs users to FOIA systems of agencies that are not yet linked to the site.³⁵ [FOIAonline](https://www.foiaonline.gov) is another government site run by the EPA that gives the public the ability to file requests directly with a number of agencies, including DHS and DOJ components.

3. Describe the specific records

Provide enough details about the specific records sought in FOIA requests so that the records can be located with a reasonable amount of effort. This includes information on the type of document, title, subject area, date of creation if known, original source of the record, or other relevant details. If you do not have details about specific records, provide enough event-related information, such as the date and circumstance surrounding the event the record covers, to facilitate the conduct of an organized, non-random search for your requested records.³⁶

4. Request a fee waiver

Requesters can ask the agency to waive or reduce search and copy fees if they think the fees are too high, or if the fees are fair but the total charges make the request prohibitively expensive. The law provides that the agency "shall" waive or reduce fees if the requester meets the public interest test. Requesters may also be entitled to fee benefits if they fall within a certain category of requester.³⁷ Apart from the fee waiver request, it is important to identify yourself for fee categorization purposes, and indicate that you are a "non-commercial" requester, in order to avoid paying excessive fees.³⁸

5. Expedite the requests

In some circumstances, agencies will grant a request for expedited processing for reporters, organizations or individuals who demonstrate they are "primarily engaged in disseminating information," and if the request concerns a matter of "compelling need." The Justice Department also provides for expedited processing to public interest groups for requests that concern a matter of "widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence."³⁹ There are additional ways to avoid long processing delays, including keeping the request targeted and specific, and offering to speak with the FOIA officer to help them locate the responsive documents.

FOIA Tip: Use cloud sharing software to share requests and responsive documents with the public. The sharing provides updated examples for new and experienced requesters of FOIA best practices.

6. Target various agencies

Requesting information from multiple agencies can often yield positive results. Additionally, filing the same request with multiple agencies can also help reduce inter-agency referrals, which can add extra time to the processing of the request.

7. Appeal the denial

Federal agencies often fail to adhere to FOIA's disclosure requirements either procedurally or substantively. When this occurs, requesters can appeal adverse decisions to higher authorities within an agency.⁴⁰

FOIA Collaboration

1. Approach FOIA with a philosophy of openness

FOIA users who consistently share their requests, appeals, and documents with the public play an essential role in advancing FOIA best practices.⁴¹ While there is often a need to initially keep documents internal while conducting investigations or planning media strategies, the open availability of the documents ultimately leads to more efficient FOIA requesting. Through an open approach, the public can see how FOIAs are crafted, identify language that works, and avoid receiving the same FOIA denials seen in other cases.

2. Learn the landscape

Before filing requests, it is best practice to learn about other groups that are engaged in similar FOIA work, and coordinate with organizations and individuals seeking the same information. This helps build collective knowledge between groups working towards similar advocacy goals and provides opportunities for collaboration that helps reduce FOIA redundancies. By learning the landscape, requesters with subject matter expertise can benefit from connecting with FOIA experts and lawyers.

3. Plan litigation strategies early and litigate strategically

The cases highlighted in this study demonstrate that early FOIA litigation planning can help prepare for agency denials and court challenges. Preparing for a FOIA case that is expected to require litigation by working with lawyers early in the process can help lay the groundwork for success. Talking with experts who know FOIA case law is increasingly important to ensure groups are choosing litigation carefully.

4. Coordinate early with journalists

Developing relationships with journalists is important to achieving the best results from FOIA work. It is also important for journalists to reach out to FOIA experts and researchers as they shape their own requests and prepare stories.



5. Promote FOIA reforms

Successful FOIA disclosures in some cases require legislative reforms to force the release of the desired information. Groups that have been filing FOIA requests for decades provide important institutional knowledge needed to promote reforms to FOIA that strengthen the law and enhance the public's right to know.

6. Use state and local open records laws

Using state and local open records laws can be an effective way to gain access to information that the federal government blocks from disclosure. Several cases highlighted in this study show how requesting documents at the local level can provide information about federal spending and can be a powerful tool to expose government waste and abuse.

7. Look in archives overseas

Collaborating on FOIA requests with civil society groups in other countries can be an effective way to obtain relevant information on U.S. foreign policy that exists in archives overseas. Groups in countries with strong information laws can help open up avenues for information that U.S. agencies keep hidden from the public.

A graphic with a dark blue background. On the left, there is a white window frame with a view of a building. Below the window, the text reads: "Closing Democracy's Window" in a large, white, serif font. Underneath that, in a smaller white font, it says: "The Growing Culture of *Secrecy* in Washington and the Erosion of the Public's Right to Know". To the right of the window graphic, there is white text on a black background that reads: "Check out Open the Government's report that examines attacks on the public's right to know, as well as the state of transparency in the White House, the Department of Justice, the Department of Homeland Security, and the Environmental Protection Agency."/>

Check out Open the Government's report that examines attacks on the public's right to know, as well as the state of transparency in the White House, the Department of Justice, the Department of Homeland Security, and the Environmental Protection Agency.

ENDNOTES

¹ For more on the new secrecy challenges under this administration, see *Closing Democracy's Window, the Growing Culture of Secrecy in Washington and the Erosion of the Public's Right to Know*, Open the Government, March 2018: <http://bit.ly/2FDIVYI>.

² While the law was reformed in 2016 to include significant provisions aimed at advancing the public's right to know, implementation of the reforms has been inconsistent across agencies and it is difficult to document a measurable impact. Serious backlogs, agency obstruction, and overuse of exemptions are a few of the issues that public advocates still face constantly when trying to pry open information through FOIA.

³ In December 2017, for example, OTG held a town hall that brought together open government leaders, criminal justice experts, privacy advocates, researchers, FOIA specialists, and journalists, to discuss ways to use FOIA to confront secrecy challenges relating to government surveillance practices. See *Advocates look to deepen FOIA collaboration to combat surveillance secrecy*, Open the Government, December 14, 2018: <http://bit.ly/2HS4ZOv>.

⁴ The online version of this report provides additional information on organizations that are using FOIA to gain access to government information, and a list of resources to help FOIA users tailor well-crafted requests, navigate the FOIA landscape, and identify opportunities for collaboration.

⁵ Trevor Timm, *Freedom of the Press Foundation sues the Justice Department for details about its push to block transparency reform*, Freedom of the Press Foundation, December 15, 2015: <http://bit.ly/2FGPmet>.

⁶ Trevor Timm, *New documents show the Obama admin aggressively lobbied to kill transparency reform in Congress*, Freedom of the Press Foundation, March 8, 2016: <http://bit.ly/2GfK2g6>.

⁷ Jason Leopold, *It Took a FOIA Lawsuit to Uncover How the Obama Administration Killed FOIA Reform*, Vice News, March 9, 2016: <http://bit.ly/1TLiNgz>.

⁸ Among other advancements, the bill codified the presumption of openness - requiring records be released unless there is a foreseeable harm or legal requirement to withhold them. Implementation of the new provisions, however, has been inconsistent across agencies and it is difficult to determine the effectiveness of the reforms, or the impact of the codification of the foreseeable harm standard. Lawsuits involving the foreseeable harm standard are still underway, at the time of the writing of this report. See Lauren Harper, *Foreseeable Harm Standard Tested in Court*, The National Security Archive, Unredacted, December 7, 2017: <http://bit.ly/2D6Oydl>.

⁹ The requests coincided with the 50th anniversary of the passage of the FOIA, and the groups released an accompanying press statement highlighting the importance of FOIA in obtaining information on government surveillance of constitutionally protected First Amendment activity. See, *Civil rights groups mark 50th Anniversary of Freedom of Information Act by filing requests to expose government surveillance of activists of color*, Center for Constitutional Rights, July 6, 2016: <http://bit.ly/2D9m17a>.

¹⁰ *Human Rights Attorneys Sue FBI, DHS for Docs about Surveillance of the Movement for Black Lives*, Center for Constitutional Rights, October 20, 2016: <http://bit.ly/2hUjJUO>.

¹¹ Sweta Vohra, *Documents show US monitoring of Black Lives Matter*, Al Jazeera, November 7, 2017: <http://bit.ly/2oYOOXA>.

¹² Freedom of Information Act Request filed with the Department of Homeland Security, Detention Watch Network and the Center for Constitutional Rights, November 25, 2013: <http://bit.ly/2DgpDUY>.

¹³ CCR and DWN argued in February 2014 that there was an urgent need for the information due to upcoming budget appropriations, and the judge in the case ordered the agencies to begin a monthly production of responsive documents. As DHS and ICE started disclosing documents, DWN and CCR published a report on immigration detention, providing advocacy groups and the public access to previously secret records with information on the private companies benefiting from the quota. See *New Report: Financial Market for Immigrant Detention Exposed*, Center for Constitutional Rights, June 11, 2015: <http://bit.ly/2HjA2BL>.

¹⁴ *Supreme Court Rules in Favor of Government Transparency Against Private Prison Corporations*, Center for Constitutional Rights, October 10, 2017: <http://bit.ly/2xw5QTI>.

¹⁵ *American Oversight and Environmental Working Group Challenge EPA over Failure to Release Pesticide Records*, American Oversight, June 22, 2017: <http://bit.ly/2tEqKyh>.

¹⁶ Eric Lipton, *E.P.A. Chief's Calendar: A Stream of Industry Meetings and Trips Home*, The New York Times, October 3, 2017: <http://nyti.ms/2xOWbEh>.

¹⁷ *Human Rights Watch Asks US about Use of Secret Surveillance for Drug, Immigration Purposes*, Human Rights Watch, January 23, 2017: <http://bit.ly/2pbyfY7>.

¹⁸ *US: New Evidence Suggests Monitoring of Americans*, Human Rights Watch, October 25, 2017: <http://bit.ly/2tBwuZA>.

¹⁹ *Dustin Volz, Exclusive: U.S. widens surveillance to include 'homegrown violent extremists' – documents*, Reuters, October 25, 2017: <http://reut.rs/2zLU52y>.

²⁰ The project is a collaborative effort that involves attorneys, technologists, and activists, working to get information on privacy-invasive police technology, advocate for limits on how the technologies are used, and hold agencies accountable for their abuse. The project has generated important resources for members of the public, advocacy organizations, journalists, defense attorneys and policymakers. See, *A Guide to Law Enforcement Spying Technology*, Electronic Frontier Foundation: <http://bit.ly/2oTIKzH>.

²¹ *Street Level Surveillance: Biometrics FOIA Campaign*, MuckRock: <http://bit.ly/2lj3MQv>. EFF and MuckRock also launched a collaboration in February 2018 in which they filed more than a thousand public records requests for information on how much data local police are collecting through automated license plate readers (ALPRs). David Mass, *EFF and MuckRock Are Filing a Thousand Public Records Requests About ALPR Data Sharing*, Electronic Frontier Foundation, February 16, 2018: <http://bit.ly/2FB10UP>.

²² *Opening the Chicago Surveillance Fund*, MuckRock: <http://bit.ly/2FLCm7e>.

²³ See, *National Security Archive v. U.S. Department of State*, filed April 26, 2017: <http://bit.ly/2p0EsGU>.

²⁴ Carol Morello, *Dissent memo circulating in the state Department over Trump's policy on refugees and immigrants*, January 30, 2017: <http://wapo.st/2FtKvOi>.

²⁵ Corbin Hiar, *Behind the doomed effort to defend, promote Dourson*, E&E News, December 14, 2017: <http://bit.ly/2CQHlsv>.

²⁶ Ariel Wittenberg and Kevin Bogardus, *Barnstorming the states: 'Pruitt does not want open press'*, E&E News: <http://bit.ly/2taGdpy>.

²⁷ Kimbriell Kelly, Wesley Lowery, and Steven Rich, *Fired/Rehired: Police chiefs are often forced to put officers fired for misconduct back on the streets*, The Washington Post, Aug. 3, 2017: <http://wapo.st/2FgfSft>.

²⁸ Scott Amey, *Previous Ethics Investigations Cause FEMA Nominee to Withdraw*, Project On Government Oversight, September 14, 2017: <http://bit.ly/2Fzs6Me>.

²⁹ Suzy Khimm, *Trump FEMA Nominee Withdraws After NBC Questions on Falsified Records*, NBC News, September 13, 2017: <http://nbcnews.to/2wZp3t5>.

³⁰ Freedom of information laws in other countries often have strong disclosures provisions, such as provisions mandating release of files on human rights violations and public interest balancing tests, leading to the release of information that the U.S. FOIA might restrict from disclosure. For more on using information laws in other countries, see John Ciorciari & Jesse Franzblau, *Hidden Files*, Columbia Human Rights Law Review, November 2014: <http://bit.ly/2tutNc3>.

³¹ Michael Evans and Jesse Franzblau, *Mexico's San Fernando Massacres: A Declassified History*, National Security Archive, November 6, 2013: <http://bit.ly/2twC4MK>.

³² Jesse Franzblau, *New Document Throws More Light on Mexico's San Fernando Killings*, Open Society Justice Initiative, December 22, 2014: <https://osf.to/2p3SzKW>.

³³ Collaboration is also important to ensure that the surge in FOIA cases that are going to court does not lead to bad case law. For more on the rise in FOIA litigation, see, *FOIA Lawsuits Surge in Trump Administration's First Year*, The FOIA Project, January 16, 2018: <http://bit.ly/2FyaWyB>.

³⁴ For more on how to file a FOIA from a media perspective, see Libby Casey, *Everything you need to know about FOIA - How to be a journalist*, The Washington Post, December 14, 2017: <http://bit.ly/2HnLI6n>.

³⁵ FOIA.gov was first created in response to the 2016 FOIA reforms, which directed the DOJ and Office of Management and Budget (OMB) to build a consolidated online request portal. The DOJ released the first iteration of the new version of the website on March 8, 2018. See *DOJ Announces the First Iteration of the New National FOIA Portal on FOIA.gov*, U.S. Department of Justice, Office of Information Policy, March 8, 2018: <http://bit.ly/2FB4Yga>.

³⁶ American Oversight provides model templates for targeted and well-crafted requests, identifying keywords and specific records. See American Oversight, *FOIA Request to EPA Calendar Entries and Phone Logs for Senior Officials*, April 5, 2017: <http://bit.ly/2FB3XYN>.

³⁷ For a description of the categories of requesters, see Reporters Committee for Freedom of the Press, *Fee Waivers*: <http://bit.ly/2FmrvBp>.

³⁸ All non-commercial requesters, including nonprofit organizations, pay for document-search time in excess of two hour and duplication in excess of 100 pages. Ibid.

³⁹ CREW regularly request and are granted expedited processing on the grounds the subject matter requested is of widespread and exceptional media interest or, in some cases, based on the argument that the requested information involves possible questions about the government's integrity that affects public confidence. See, *FOIA Request – Department of Justice, Sessions Recusal*, Citizens for Responsibility and Ethics in Washington, January 29, 2018: <http://bit.ly/2DdbDLt>.

⁴⁰ See sample appeal from Open the Government & POGO, here: <http://bit.ly/2FsGRAq>. The RCFP FOIA Wiki also provides samples of appeals, here: <http://bit.ly/2HirScK>.

⁴¹ Groups highlighted in this study, such as American Oversight, use Document Cloud to publish everything they request and receive through FOIA, along with analysis explaining the records. See DocumentCloud.org: <http://bit.ly/2dU93iM>.

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