

Threats to Information Access in the Trump Era

Daniel Grinberg, University of Pennsylvania

Through the Freedom of Information Act (FOIA), reporters and advocacy organizations have partially identified the lavish incentives and billion-dollar tax breaks that U.S. cities pitched to woo the new Amazon location known as HQ2.¹ News stories also drew on FOIA disclosures to reveal some of the Immigration and Customs Enforcement (ICE)'s covert detention practices and the enormous sums that Republican groups were spending at Trump-owned businesses.² In a more pop-cultural direction, *Richmond Times-Dispatcher* journalists recently used FOIA to discover that the Virginia Tourism Authority had paid over half a million dollars to the *Bachelorette* for the show to film an episode in the state capital.³

Indeed, since the enactment of the federal law in 1967 and the fifty state versions that followed, FOIA has often proven to be a powerful mechanism of transparency. It has catalyzed the release of hundreds of thousands of records from over 100 agencies and departments. This production of media typically includes the releases of paper documents or digital scans, but all kinds of audio/visual records such as photographs, videos, and films are subject to the law. FOIA has also led to the creation of official digital archives, with each agency required to create their own version of an electronic reading room. Along with making such massive archives of contemporary and historical media objects publicly available, FOIA has helped provide partial apertures onto the policies and practices of media industries and conglomerates. It has simultaneously been an important tool for investigative journalists and scholars to base their work on. As such, the act is both a source of official media production and a vital instrument to help analyze and contextualize the shifting media landscape.

Yet, because of its efficacy in extracting revealing documents, FOIA finds itself at perpetual risk. Due to the potential embarrassments and scandals it could expose, there has been a sustained lack of political will to properly fund or staff its mandated offices or to adequately prepare for technological shifts. Beyond its idealistic rhetoric, many FOIA users associate it instead with lengthy delays, improper denials, overzealous redactions, and bureaucratic failure. In particular, agencies involved in classified and secret national security practices like the FBI and CIA have deployed all kinds of

¹ Sarah Holder, "What Did Cities Actually Offer Amazon?," *CityLab*, May 29, 2018, <https://www.citylab.com/life/2018/05/what-did-cities-actually-offer-amazon/559220/>.

² Anita Kumar, "Trump businesses made millions off Republican groups and federal agencies, report says," *McClatchy DC Bureau*, Apr. 16, 2018, <http://www.mcclatchydc.com/news/politics-government/white-house/article208855534.html>.

³ Colleen Curran, "Virginia Tourism paid \$536K for "The Bachelorette" to film in Richmond," *Richmond Times-Dispatcher*, July 6, 2018, https://www.richmond.com/entertainment/plus/virginia-tourism-paid-k-for-the-bachelorette-to-film-in/article_31426a75-ce94-5ef4-b27a-25487ff94b7c.html.

technical, legal, and logistical strategies to obstruct releases for years or even decades. During the launch of the Global War on Terror amid the George W. Bush administration, the creation of nebulous new classification categories and over-application of exemptions arguably marked a height of governmental opacity. Because of such conditions of flagrant obstruction, important stories go untold, potential archives remain uncreated, and histories lack valuable primary-source materials.

Amidst this worrisome backdrop, FOIA researchers are uncertain how the Trump administration will affect the operations of the law. Through both his rhetoric and policy, Trump has continually attacked transparency and accountability structures in favor of emphatically upholding lies. His missing tax records, unaccounted-for meetings with Vladimir Putin, and murky financial ties are just some of the areas in which he has brazenly flouted checks-and-balances protocols. He has also violently decried the value of critical journalism and even the status of evidence itself, labeling reporters with such threatening, fascist terms as the “enemy of the people.”⁴ The privatization of public services that Trump’s neoliberal model favors (although certainly not exclusive to this administration) has also increasingly put growing stores of documents beyond access of the legislation. Moreover, he has appointed and nominated figures such as Gina Haspel and Brett Kavanaugh who have defiantly kept their records out of public reach. With Republicans in control of all three branches of government, such disregard has perpetuated a tolerance for willful obstruction throughout agencies’ institutional cultures with few effective challenges. Because one party is in control of all three branches, it also has no evident desire to strengthen a system in serious need of reform.

Yet, the inattention paid to FOIA in the age of Trump thus far may be at least slightly encouraging. Researchers have not yet observed dramatic shifts in rates of releases, and no sweeping executive order or Congressional proposal has yet been issued. JPat Brown, of the FOIA advocacy organization MuckRock, told me that the Trump administration is “never going to be pro-FOIA, but they won’t be trying to smother it with a weaker version, which is what we were looking at [with the Clinton administration] . . . It’s less ‘slow creeping death’ and more ‘dodge the huge hammer falling.’”⁵ Because of the aggressive opacity of Trump officials and the many scandals they have been involved in, reporters, activists, and other media-makers may also be turning more to FOIA as a tool to expose corrupt and illegal practices. In the first year of Trump, the number of FOIA lawsuits that media companies filed did rise noticeably.⁶ In one galvanizing case, when a cascade of egregious violations of Scott Pruitt emerged through FOIA requests, the widespread news coverage finally resulted in his

⁴ William P. Davis, ““Enemy of the People”: Trump Breaks Out This Phrase During Moments of Peak Criticism,” *New York Times*, July 19, 2018, <https://www.nytimes.com/2018/07/19/business/media/trump-media-enemy-of-the-people.html>.

⁵ JPat Brown, personal interview, Mar. 2018.

⁶ Aaron Mak, “The Sierra Club Declared War on Scott Pruitt—and Won,” *Slate*, July 20, 2018, <https://slate.com/technology/2018/07/scott-pruitt-how-the-sierra-club-declared-war-on-the-epa-head-and-won.html>.

resignation.⁷ However, as this case illustrates the power of FOIA as a media producer and media instrument, it also affirms how much the loss or weakening of this precarious system would further damage the disclosure of state abuses.

Daniel Grinberg is the inaugural Postdoctoral Fellow for the Annenberg School for Communication's Center for Media at Risk at the University of Pennsylvania. His research focuses on issues related to government documents, war media, surveillance, and documentary film. His writing has appeared in journals such as *Studies in Documentary Film*; *Jump Cut*; *Surveillance & Society*; *Media, War & Conflict*; and the *Journal of War and Culture Studies*, and is forthcoming in *Cinema Journal* and *Media, Culture & Society*. He is currently working on his first book, *Partial Disclosures: Documentary Media and the Freedom of Information Act*.

⁷ FOIA Project Staff, "Media Lawsuits Seeking Government Records Jump Under Trump," Aug. 2, 2018, <http://foiaproject.org/2018/08/02/media-foia-lawsuits-jump-under-trump/>.