

No More Excuses: Technology Makes Public Records Truly Public

Technology can make record review process much more efficient and less resource-intensive. And it is the civic responsibility of leaders within state and federal agencies to invest in these solutions so that their institutions can provide the transparency so critical to healthy government.

By **Andy Wilson** | July 10, 2018 at 04:39 PM



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The public outcry and [lawsuits](#) over alleged secrecy at the U.S. Environmental Protection Agency shine a spotlight on what's long been a problem: inadequate public access to government records.

Federal agencies are required by law to produce public records that are appropriately requested. The Freedom of Information Act requires that all government records be open

to the public with exceptions for those affecting national security or personal privacy. It has become an essential tool of government accountability and has provided a crucial window into the inner workings of our democracy.

But ask any journalist who's worked with FOIA, and they'll tell you that many agencies, not just the EPA, routinely take months or years to fulfill record requests. [Undark](#) recently reported that of 1,181 FOIA requests made to the EPA last year, just 17 percent had been filled. Increasingly, requestors are forcing the issue. [Earthjustice](#), representing the Sierra Club, has filed a lawsuit seeking to force the EPA to comply with FOIA, alleging that delays are excessive under Administrator Scott Pruitt, who resigned effective July 6.

Long before President Donald Trump's administration took over, agencies have cited ample reasons for slow FOIA responses: huge backlogs of requests and slim staffing among them. I can add one more: big data. Bureaucracies have always been document-making machines. But now, their every move leaves a massive wake of emails, texts, chats, social media, smartphone notes, voice memos and a host of other information that is fair game under FOIA. Combing through all that data is a massive undertaking. But it has also become a crutch for agencies that can point to their own outdated processes, antiquated tools and lack of resources to justify woefully insufficient responses.

No More Excuses

But here's the thing: technology can make this record review process much more efficient and less resource-intensive. And it is the civic responsibility of leaders within state and federal agencies to invest in these solutions so that their institutions can provide the transparency so critical to healthy government. Today, government organizations search and review files potentially responsive to FOIA requests manually, one document at a time, redacting sensitive information with a Sharpie or free PDF viewer. The process is painstaking, expensive and slow, resulting in missed production deadlines and, ultimately, subverting the law—the effectiveness of which is dependent on prompt disclosure of information. Most times, requestors also bear the costs of filing FOIA requests.

This is simply unacceptable. Our government sent a spaceship to the moon 50 years ago. In 2018, we should expect it to embrace the type of intelligent automation tools that are now widely used by legal professionals in the private sector and, increasingly, at the state and local government levels. These solutions ingest data of all kinds, group them by similarities and allow for quick identification of documents that meet necessary criteria, whether that be the inclusion of a certain word, a specific piece of metadata, or other key attributes such as email sender. Sensitive material can be automatically redacted and work product can be QC'd with predictive analytics.

The U.S. Department of Justice, Executive Office of the U.S. Attorney, for instance, uses technology to [replace manual Freedom of Information requests](#) and many other forward-thinking government organizations are following suit. Our company, Logikcull, works with four of the 12 biggest city litigation departments to automate legal discovery and speed public record response efforts.

Modern technology also makes it possible for agencies to avoid reviewing all data every time something is requested. Instead, they can access already scrubbed data from other requests to fill new ones.

“By uploading the universe of documents into one, consistent service, running the searches required to pull the necessary documents—and even to carry over the necessary information about privilege and confidentiality learned from prior reviews—becomes instantaneous,” [Above the Law](#) recently reported.

The good news is that while the government may be slow in adopting new technology, it is increasingly cloud savvy. Market researcher Gartner expects double-digit growth in [government use of public cloud services](#), with spending forecast to grow on average of 17.1 percent per year through 2021. Whether these funds will be allocated to FOIA response is an open question.

Time to Make Improvements

The sometimes slow response to fill FOIA requests didn't start with the Trump administration and probably won't end with it, either.

David Cuillier, director of the University of Arizona's School of Journalism, has built a career around FOIA. Some of his [most recent research](#) found that many freedom of information experts believe that public access is worse now than a few years ago and that nearly nine of 10 think it will get worse in the future.

"It's pretty clear that federal agencies used exemptions to hide information under the Obama administration, played all sorts of different games to hide information," Cuillier [told us last year](#). "A lot of agencies are getting very good at gaming the system, essentially using the law as a tool of secrecy instead of transparency."

This behavior poses a threat to our democracy and we can't allow it to continue. Over more than 50 years, FOIA has had a significant impact in helping to expose government waste and mismanagement, food and drug safety shortfalls and other issues critical to the public's well being and to the nation's democratic processes. For political reasons, some may wish to water down FOIA or simply refuse to comply with it. But, in 2018, there are no longer any technological excuses.

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