

**PUBLIC INFORMATION**

**US Freedom of Information Act  
&  
Further Federal Laws Supporting  
Access**

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**“Sunlight is said to be the best of  
disinfectants.”**

Louis D. Brandeis  
(U.S. Supreme Court, 1916-1939)

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**INTRO** (source: Henry Perritt)

Equal access must be the centerpiece of an information policy at all levels of government.

Idea reflected in various ways including:

1. Freedom of Information Acts  
- fed and state
2. Paperwork Reduction Act - encourages diversity of sources for government information  
OMB Circulars: A-130 encourages affirmative dissemination

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3. Intellectual property law not applicable to public information (i.e. federal records)

4. First Amendment (Free Speech) invalidation of most competitive publishing restrictions imposed by government

5. Antitrust law is suspicious of state monopolies.

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Tricky balance?

- gov't monopolies and restrictions on dissemination restrict access to the raw materials of government

VERSUS

- if gov't gives away public information below cost, undermines market opportunities for private sector vendors of public information

This framing of issues results in circular arguments! (i.e. **not** good basis for policy making)

Note: Government cost to publish is now extremely low (Internet) but also don't want government as sole publisher

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Better Framing of Policy Issues

The best public information policy is one that promotes:

1. A diversity of channels and sources of public information.
2. Public information availability in electronic formats when used in this form by government.
3. Healthy competition in the information marketplace.

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**State Monopolies in Public Information**  
 (local, state, federal gov't)

- prohibit private sector competition
- government revenues are generated from secondary use of information (permutation - sometimes share revenues with private partners)

Monopolies block participation in a variety of diverse markets for information products .... restrictions extend into downstream markets

Public decision makers not better than consumers & entrepreneurs in choosing technologies and product designs

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**Perrott's View**

Framework for access to public information - begin with two policy propositions

- Gov't must make electronic formats available when they exist.
- Gov't must allow and promote diversity of channels and sources of public information
  - no one supplier can design information systems to meet all user needs

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**Federal Government Dissemination Duties**

1995 Paperwork Reduction Act.

- policy for the dissemination of electronic information created and maintained by Federal Agencies

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- requires federal Agencies
- to provide timely and equitable access to public information,
- to encourage a diversity of information sources (both private and public),
- to obtain public input when changing dissemination systems or activities, and
- in general prohibits exclusive and restrictive policies with respect to the release of public information.

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**Freedom of Information Act (FOIA)**

- grants private individuals and electronic publishers access to government records
- provides the most important protection against government maintaining monopolies over records gathered by government agencies

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The Freedom of Information Act 5 U.S.C. § 552, As Amended

(2) Each agency, ..., shall make available for public inspection and copying--

(D) copies of all records, regardless of form or format, which have been released to any person ...

... unless the materials are promptly published and copies offered for sale.

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For records created on or after November 1, 1996, each agency shall make such records available ... by ... electronic means.

To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details ...

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(3)(B) In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.

(3)(C) .... agency shall make reasonable efforts to search for the records in electronic form or format

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(4)(A)(ii)(I) fees shall be limited to reasonable standard charges for document **search, duplication, or review**, when records are requested for commercial use.

(II)... **only duplication** standard charges if for educational, scientific, or news media purpose

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THE NINE EXCEPTIONS

(b) This section does not apply to matters that are--

(1)(A) specifically authorized under criteria established by an Executive order to be kept **secret in the interest of national defense or foreign policy** ... and (B) are in fact properly classified ...

(2) related solely to the **internal personnel rules and practices** of an agency;

(3) specifically exempted from disclosure by **statute** provided that ... [statute clearly states & has criteria]

Five horizontal lines for notes.

(4) **trade secrets** and **commercial or financial information** obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency **memorandums** or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) **personnel and medical files** and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

Five horizontal lines for notes.

(7) records or information compiled for **law enforcement** purposes ...

(8) related to examination ... or supervision of **financial institutions**; or

(9) geological and geophysical information and data, including maps, concerning **wells**.

Five horizontal lines for notes.

**Federal FOIA Case Law**

A. Right to Access Extends to Virtually All Federal Records and All Federal Agencies.

Issues:  
 What is a federal government record? (i.e. attempts to avoid release under FOIA)

1) Is a government contractor a government agency for purposes of the act?  
 - gov't control over record or database?

2) If gov contractor adds proprietary features (copyright), does access or copyright prevail? [Tax Analysts v. US Dept of Justice]

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B. Right to Access extends to all individuals and entities regardless of reason for request  
 [US Dept of Justice v. Tax Analysts, 492 U.S. 136 (1989)]

C. Government Required to provide Electronic Copy even if Paper Document Available. [Id.]

- review and printing/copying of electronic records not "creation" of a new record

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Result:

FOIA not only requires the government to provide access to government databases and information about private individuals who request it, but **facilitates commerce** by granting access to business entities requesting information for commercial purposes and in a form conducive to electronic manipulation

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**A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records (86 pages)**

Published by Congress:  
<https://fas.org/sgp/foia/citizen.html>

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