



## Management of Public Records and FOI: Closing the Gaps in Responsiveness

*By Michael Maitland, CRM*

Records managers around the world are likely familiar with freedom of information (FOI) laws in their respective countries, especially when considered at the national or federal levels. But recent research concerning local, municipal-level compliance with these laws holds important lessons, especially for records managers who work in the public sphere. This new research shows that local compliance with FOI laws is inadequate, subject to manipulation, and influenced by legal and political factors.



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In the United States, the federal Freedom of Information Act has received significant attention since its inception in 1966.<sup>1</sup> FOI legislation generally grants the public the right to demand access to information held by governmental and municipal bodies. Proponents of FOI legislation argue that it increases government accountability, informs the public, provides access to the press, increases transparency of government decision-making, and reinforces governmental legitimacy. The press and the public have widely analyzed federal responsiveness to FOI requests, the information provided, and the timeliness of responses.<sup>2</sup>

More recently, the focus has shifted from the national stage to the local one, studying municipalities and parishes to determine their responsiveness with state and federal mandates. The recent studies described below originated in two European nations, but their findings are relevant to records managers throughout the world because FOI legislation has become so

ubiquitous. Further, as described, their findings are consistent with research conducted in many other countries, including the United States. In brief, the selected research shows that municipal actors fail to respond to requests more than 70% of the time and demonstrate a variety of biases when they do. As the research concentration shifts, inquiries into the conformity of local governments reveal significant obstacles, as well as underscore important lessons for public records managers working to ensure compliance, limit risks, and improve transparency.

### **Recent research findings**

In 2018, Peter Spáč, Petr Voda, and Jozef Zagrapan published “Does the Freedom of Information Law Increase Transparency at the Local Level?”, an article that presented findings from their research in municipalities in Central Europe.<sup>3</sup> Primarily the researchers were trying to determine whether municipal administrators were more responsive to requests for public information when the requests contained a legal assertion (i.e., reference to the FOI laws) or a moral appeal (i.e., emphasizing civic duty). In order to test their hypothesis, they sent emails to elections officials in nearly 2,900 municipalities in Slovakia, with each email containing either a reference to the law, a moral appeal, or a neutral message containing neither. The researchers concluded that a reference to FOI laws had a positive impact on responsiveness, nearly doubling it, while moral appeals had no impact when compared to the neutral letter. Nevertheless, they found the overall response rate was only about 30% or that nearly 2,000 responses went unanswered.<sup>4</sup> The researchers also looked further into the municipalities and their leadership to explore any correlation of FOI compliance with other factors (e.g., size of the municipality, political affiliation of mayors, ethnicity demographics).

Similarly, a 2017 field study conducted by Ben Worthy, Peter John, and Matia Vannoni in England, titled “Transparency at the Parish Pump,” compared responsiveness in the case of a formal FOI request that contained a reference to the law, against a more informal request for information.<sup>5</sup> The researchers sent emails to about 4,300 parishes throughout England and found that the reference to FOI laws yielded a response rate that was double that of the informal request. Still, the response rate was paltry – overall, 85% of requests went unanswered.<sup>6</sup> The authors commented that these results were in line with expectations; they had estimated a 10% answer rate based on prior field studies conducted by journalists in Arizona.<sup>7</sup>

### **Takeaways**

The referenced studies, and others, provide useful data for managers of public records and information.

- **Response rates are alarmingly low.** These two studies demonstrated that up to 85% of requests for information went unanswered, despite laws requiring compliance. The reasons for non-compliance are likely complex and varied. Records managers wishing to improve responsiveness and transparency should make sure that members of the public can easily understand how and where to make a request in order for it to be processed

by the right person or office, and that those offices are appropriately staffed and empowered to respond.

- **Responsiveness can be influenced by the nature of the request.** Consistently, these studies demonstrated that requests which used more formal language received almost twice as many responses as those that did not, establishing that staff treated requests differently based on the format and perceived tone. It is noteworthy that a majority of the requests in the experimental population went unanswered even though they were submitted by legitimate, identified researchers. Other studies have found that requestors who appeared to have university affiliations fared better than those who did not.<sup>8</sup> Thus, the response rate might be even lower for laypeople without a university connection, despite the use of a legal tone. Information professionals who want to ensure equal access to public information should strive to ensure impartiality in responses to requests, regardless of their nature, unless specific criteria are required in their jurisdiction.
- **Leaders have an impact.** In the Central European study, there was a strong correlation between a city's responsiveness and the personal or political characteristics of its mayor. For example, cities with female or non-party-affiliated mayors responded at higher rates.<sup>9</sup> It is a truism in management that the tone set at the top of an organization can influence the behavior of those all the way down the chain. In fact, researchers in the United States have found considerable differences in the way that different presidential administrations handled FOI requests.<sup>10</sup> Information professionals in leadership roles should be especially mindful of their ability to influence their staff and their organization to strengthen compliance with relevant FOI laws.
- **Employee training is key.** Low response rates have been consistent in studies in many countries and contexts throughout the years. Comprehensive training and auditing are the most obvious remedies for this problem, whether the causes relate to ignorance, neglect, or cynicism. Employees within records management certainly need to be trained to understand and process FOI requests. Training should also be extended to staff and administrators who are likely to be contacted by the public, especially those whose email addresses are published on external websites.
- **Policies are not a sufficient remedy.** It is not enough to adopt policies that merely assert the organization will act in accordance with FOI laws. The laws and rules regarding FOI compliance are already established, yet municipalities and parishes fail to comply with the spirit of these laws in an overwhelming majority of cases. Instead, public records managers should actively audit and assess their organization for appropriate handling of FOI requests.
- **FOI compliance presents a significant risk to applicable organizations.** Depending on the laws in a specific locality, the penalty for non-compliance with an FOI request may be as significant as that for a data breach or that of a legal sanction due to spoliation or

violation of a legal hold. Public records managers should take steps to reduce the inherent risk involved in the low response rates found in the research.

- **Smaller organizations may be more at risk.** At least in Slovakia, the research demonstrated that larger municipalities were more responsive to requests, regardless of form.<sup>11</sup> This finding may have implications for funding and staffing in professional circumstances for organizations of all sizes. However, the risk of non-compliance may be magnified for smaller municipalities where non-compliance could result in penalties that are disproportionately large.

### **Applicability to specific organizations**

Public sector information managers should consider some of the characteristics of this research before applying its takeaways. First, both recent studies were conducted in Europe – one in a country that only recently adopted its FOI laws – and this may have affected familiarity with the laws, enthusiasm, and compliance. Further, both studies focused on requests for seemingly benign information, like counts in a past election or the organizational chart of water management districts. Other studies have shown that staff is less likely to respond to information requests that present the organization in a negative light.<sup>12</sup>

### **Steps toward improvement**

Given the overall poor response rates indicated by these studies, records managers may want to conduct their own audits by sending information requests to their organization and monitoring responsiveness. Such an audit could be conducted formally or informally, depending on the complexity of the organization. The audit may identify localized weaknesses that can be addressed. It should include staff and administrators who are likely to receive these kinds of requests, regardless of their areas of responsibility, especially if these staff are contact points for members of the public.

As appropriate, information managers should conduct training on responding to such requests (or redirecting them to the correct parties) within an organization's records management team and beyond to the general body of the organization. Training should focus on fostering responsiveness that ignores the format of the request, ensuring that all responses are handled equitably, regardless of whether they include reference to a legal or moral mandate. The records manager should conduct further assessments and audits to determine whether the anticipated results are being achieved uniformly and whether changes may be necessary.

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<sup>1</sup> See 5 U.S.C. § 552

<sup>2</sup> For discussion of FOI laws in the UK compared to other nations, see Hazell, Robert and Ben Worthy. 2010. "Assessing the Performance of Freedom of Information." *Government Information Quarterly* 27: 352-359. doi:10.1016/j.giq.2010.03.005.

<sup>3</sup> Spáč, Peter, Petr Voda, and Jozef Zagraban. 2018. "Does the Freedom of Information Law Increase Transparency at the Local Level? Evidence from a Field Experiment." *Government Information Quarterly* 35:3: 408-17. doi: 10.1016/j.giq.2018.05.003

<sup>4</sup> *Ibid.* p. 413

<sup>5</sup> Worthy, Ben, Peter John, and Matia Vannoni. 2017. "Transparency at the Parish Pump: a Field Experiment to Measure the Effectiveness of Freedom of Information Requests in England." *Journal of Public Administration Research and Theory* 27:3 485–500. doi:10.1093/jopart/muw063.

<sup>6</sup> *Ibid.* p. 493

<sup>7</sup> See Cuillier, David. 2010. "Honey vs. Vinegar: Testing Compliance-gaining Theories in the Context of Freedom of Information Laws." *Communication Law and Policy* (15): 203–29.

<sup>8</sup> Michener, G., Moncau, L. F., & Velasco, R. B. (2016). "The Brazilian state and transparency: evaluating compliance with freedom of information.". Rio de Janeiro, Brazil.

<sup>9</sup> Spáč, Voda, and Zagraban, p. 413.

<sup>10</sup> See Wasike, Ben. 2016. "FoIA in the Age of 'Open Gov': An Analysis of the Performance of the Freedom of Information Act under the Obama and Bush Administrations." *Government Information Quarterly* 33: 417-426. doi:10.1016/j.giq.2016.05.001.

<sup>11</sup> Spáč, Voda, and Zagraban, *supra* p. 415.

<sup>12</sup> Choi, Jeong Min. 2018. "Factors Influencing Public Officials' Responses to Requests for Information Disclosure." *Government Information Quarterly* 35: 30-42. doi:10.1016/j.giq.2017.11.007.