

Freedom of Information in Community Journalism

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Studies of freedom of information (FOI) requests by journalists often focus on outcomes. However, the FOI request process is often more complicated than submitting a request and awaiting a decision; it may require numerous and delicate interactions with records officers. These interactions are particularly fraught for community journalists, for whom maintaining friendly relationships with sources is paramount. This study, based on FOI requests to 45 New York municipal clerks, finds additional interactions were required in more than three-quarters of municipalities that held relevant records. The reasons for those interactions were specific to the places in which requests were filed.

Journalists use freedom of information (FOI) requests to access government records that might otherwise be difficult to get. Records obtained through FOI requests can illuminate “how government decisions are made and the impact of these decisions” (Walby & Larsen, 2011, p. 31). Access to government data can allow journalists to spot trends, and unearth stories that might otherwise go unnoticed. Journalists have used FOI requests to break controversial stories about, for example, the United States government’s rejection of foreign aid after Hurricane Katrina; efforts by Chinese hackers to disrupt satellite networks; and General Motors’ delayed response to fatal accidents involving its ignition switches (News Media for Open Government, n.d.). At a time of increasing interest in computational journalism, government data appeal to journalists due to their abundance and potential for public impact (Coddington, 2015).

For community journalists, using FOI requests to obtain information from local governments is of particular interest. Indeed, most FOI requests by journalists are filed at the state or local, rather than national, level (Cuillier, 2011). This tendency is not surprising given that most journalism is locally based (Lauterer, 2006; Reader & Hatcher, 2012, xiv). Community journalists have used FOI requests to gather documents such as building permits, crime reports, liquor license applications, and restaurant inspections (Parasie & Dagiral, 2013). Examples of community journalism that has used FOI requests include investigations into fraudulent deed transfers, coverups of unsafe transportation systems, and exorbitant salary increases for public officials (Cuillier, 2017).

And yet, obtaining newsworthy information through FOI requests can be difficult. Journalists who have used FOI requests often complain that records officers take too long to respond. Timely responses are particularly important as news deadlines shorten (Barnhurst, 2011). Even when responses are timely, requests are frequently denied, or fulfilled only partially.

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Requesters who file appeals rarely succeed. The only other remedies available are lawsuits, which few journalists can afford to file. As a result, many journalists simply do not bother making FOI requests. Roughly two-thirds of U.S. journalists have little or no experience with them (Cuillier, 2011).

For community journalists, the FOI request process is particularly challenging. The tenets of community journalism emphasize the importance of being visible in the community (Terry, 2011), and maintaining friendly, informal relationships with potential sources (Byerly, 1961). Considering the difficulties FOI requesters have described in their interactions with records officers, and the formal nature of the process itself, filing requests could jeopardize the friendly, informal relationships community journalists work hard to build. However, relationships between journalists and records officers are not always antagonistic. How might community journalists negotiate the delicate FOI request process? This article aims to address this question by examining the responses of, and negotiations with, local records officers who denied FOI requests.

Literature Review

FOI laws emerged from the notion that people have a right to know “what their government is up to” (U.S. Department of Justice v. Reporters Committee for Freedom of the Press, 1989, quoting from Henry Steele Commager, *New York Review of Books*, Oct. 5, 1972, p. 7). The principles of FOI can be found in the writings of John Dewey, who argued that a democratic society depended on the free flow of information:

There can be no public without full publicity in respect to all consequences which concern it. Whatever obstructs and restricts publicity, limits and distorts public opinion and checks and distorts thinking on social affairs (1927, p. 167).

Laws that establish a right to know can help the public participate more fully in democratic societies by, among other things, help them communicate their wishes to elected representatives (Meiklejohn, 1948), hold officials accountable (Stiglitz, 1999), help agencies identify inefficiencies and reduce expenses (Larbi, 1999), and challenge tendencies within government to overclassify information (Fuchs, 2006). The concept of a right to know can be situated among a broader set of principles known as open government. Those principles include transparency, information sharing, collaboration, and citizen engagement (Wirtz & Birkmeyer, 2015). In addition to FOI, other laws associated with open government relate to open meetings, open data, and the reduction of paperwork and jargon (McDermott, 2010).

While a right to know is generally accepted as a democratic value, government transparency should have limits (Schudson, 2015). Opening government information to the public can have a “dark side” (Zuiderwijk & Janssen, 2014), including the potential misinterpretation of that information. Open government initiatives can also compete with other societal values, such as national security and the right to privacy (Raab, 1997). Transparency initiatives can also have practical limits. Many agencies struggle to respond in a timely fashion to an ever-growing number of FOI requests, potentially leading to less, rather than more, transparency (Rizzardi, 2014). Governments have tried to address these challenges in different ways. They may, for instance, apply “balancing tests” to assess whether the release of information would harm other societal interests (Halstuk & Chamberlin, 2006). Agencies may

try to manage the flow of requests by charging fees for certain types of requests, especially those that are deemed commercial in nature or that are particularly time-consuming to fulfill.

Given the challenges involved in managing FOI requests, it is not surprising that relationships between records officers and requesters can be adversarial. Journalists have argued that records officers use inconsistent standards to determine whether documents should be released in full, redacted, or fully withheld (Brennan, 2013; Kwoka, 2011; Shepherd, Stevenson & Flinn, 2010). Some documents that are released are so heavily redacted that they become devoid of any useful information (Arizona Newspapers Association, 2016). Other conflicts arise when agencies fail to keep up with changes in FOI laws that require greater transparency (Bertot, McDermott, & Smith, 2012). Journalists have often accused records officers of charging excessive fees (Associated Press, 2015; Pruitt, 2015; Vaznis, 2016), and of purposely providing records in paper form or in non-machine-readable formats such as image files (Bush & Chamberlin, 2000; Fink & Anderson, 2015), because they are less useful.

For their part, records officers also have plenty of complaints about FOI requesters. Records officers are particularly bothered by “nuisance” or “vexsome” requesters, including those who are disgruntled, file numerous requests, request information at inconvenient times, use overly broad terms to describe what they want, and/or are perceived as having frivolous or malicious intent (Kimball, 2016). Records officers believe some requesters use FOI laws not to obtain information of public interest, but to satisfy idle curiosities, waste the government’s time, or punish officials they do not like (see e.g. Shaner, 2016).

Community Journalists

Community journalism is generally defined as reporting that focuses on a specific, rather than mass, audience (Byerly, 1961). By engaging specific audiences, community journalists can fill coverage gaps left by larger media organizations (Carpenter, Nah, & Chung, 2015). Unlike journalists who serve larger audiences, community journalists are expected to adhere to community norms as well as professional norms (Reader, 2012). That is, community journalists must report facts as well as be “friendly neighbors” (Byerly, 1961). They are also expected to be accessible and empathetic. Community norms call for approaching sources “with a good dose of humility, and not by casually tossing out phrases like ‘the people’s right to know,’ then pulling up the drawbridge, and retreating into the fortress of an office” (Cross, 2011, para. 4). By engaging directly with the audiences they serve, community journalists aim to understand the nuances of local issues and, as a result, build trust with sources and audiences (Bressers, Smethers, & Mwangi, 2015; Meadows, 2013).

The expectation that community journalists be “friendly neighbors,” however, may lead them to avoid stories that portray the people they cover in a negative light (Barney, 1996). When they do cover bad news, they are expected to balance the public’s right to know with “the community’s *need to know*” (Reader, 2012, p. 7). Publishing negative stories can thus take courage for a community journalist, who “does literally have to face his readers on the street” (Bagdikian, 1964, p. 110). Losing the trust of one’s audience can make the community journalist’s job difficult, given the relatively small pool of available sources (Ekdale, 2014).

Maintaining the trust of local officials is particularly important to community journalists, given the abundance of news that originates with government sources (Gans, 1979; Tuchman, 1978). Local governments often support the efforts of community journalists, believing that the health of their communities depends on the availability of information (Stonbely, Napoli,

McCullough, & Renninger, 2015). However, information that is ostensibly public can still be controversial when reported by community journalists. One newspaper stopped publishing an annual list of government employee salary data after being told it was “not a nice thing to do” (Fink & Anderson, 2015, p. 473). Mugshots of people who have been arrested are also usually public information, but news organizations that compile them have been criticized (Lee, 2017). Given these controversies over public records, community journalists may be reluctant to make FOI requests, in the interest of maintaining cordial relationships with valuable sources.

Local Records Officers

Access to public records is “more about the people than the law” (Cuillier, 2010a, para. 2). That is, decisions over whether FOI requests will be fully granted, partially granted, or denied can vary widely among public records officers. Understanding why records officers privilege or penalize certain requests may help journalists improve their chances of getting the information they want. For community journalists, understanding the ways *local* records officers make decisions is particularly important, since “community” is often, although not always, defined by geographic boundaries (Christensen & Levinson, 2003; Robinson, 2014).

Decisions by records officers vary in part because FOI laws are complex and open to interpretation. In the U.S., the Freedom of Information Act (FOIA) is generally considered to guide access to public records at federal agencies; however, some offices, such as the White House, are excluded from FOIA, and separate laws pertain to the Legislative and Judicial branches of government. Federal guidance on FOIA also refers to more than 70 other statutes that may result in the withholding of requested records (U.S. Department of Justice, 2018). Each state also has its own law covering access to state and local records. Although state laws tend to be similar to FOIA, they may differ in several ways, such as required response times, the types of records that are exempt, and potential remedies for FOI violations (Fink, 2018).

The processing of FOI requests also differs at the national, state, and local level. At the local level, responding to FOI requests is among a myriad of duties that tend to fall on municipal clerks (Kimball, 2016). Other duties may include attending and recording the minutes of local government meetings, preparing budgets, collecting taxes, communicating with the public, and gathering and maintaining historical records. Municipal clerks are often elected positions that are “neither wholly political nor wholly administrative” (Gordon, 2011, p. 172), serving a broad range of constituencies with competing interests and demands. Municipal clerks tend to work long and irregular hours and be undercompensated, and may have trouble separating their work and personal lives (Blackburn & Bruce, 1989).

Municipal clerks are also “street level bureaucrats” who enjoy a high degree of autonomy (Kimball, 2016; Lipsky, 2010). Thus, they tend to have wide discretion in how they respond to FOI requests. Municipal clerks report mostly positive interactions with FOI requesters, and say they support government transparency in general (Kimball, 2012, 2016). However, municipal clerks also believe FOI laws are widely open to interpretation (Kimball, 2003) and that releasing too little information is less risky than releasing too much. Indeed, few people whose FOI requests are partially or fully denied challenge those decisions—and winning appeals or lawsuits is difficult (Baker, 2015; Verkuil, 2002). Even when the government loses such cases, records officers who are found to have wrongly withheld information are rarely punished (Hull, 2004).

If municipal clerks believe FOI laws to be open to interpretation, what guides those interpretations? Studies of how municipal clerks perceive their work yield some clues. Municipal

clerks see their primary responsibilities as clerical in nature. Keeping accurate, confidential records for the use of government employees is seen as more important than maintaining access to those records for the public (Kimball, 2012). Municipal clerks also prioritize protecting confidentiality (Davenport & Kwoka, 2010; Kimball, 2003). Few states require records officers to be trained in how to respond to FOI requests (Kimball, 2012), and those that do may not require it on a regular basis (Davenport & Kwoka, 2010). Kimball (2003) found that records officers based their decisions on whether to release information not only on their interpretation of public records laws, but also the degree to which they sympathized with requesters (such as crime victims) or felt accountable to their bosses or co-workers. They may also disfavor other types of requests, such as those from people deemed to be “nuisances” because of their behavior, as well as journalists and political activists (Roberts, 2002). Records officers may also limit access to information if they believe it will be used for marketing purposes (Phelps & Bunker, 2001). Local records officers may also withhold requested information if records management software makes retrieving the information difficult (Shepherd, Stevenson & Flinn, 2010).

The Role of Place

The variability of FOI laws and request processes highlight the need to consider the role of place in this research. Place is often underemphasized or ignored in journalism research, despite its importance in the practice of reporting and the ways news organizations claim authority (Usher, 2019). Places that impact journalism include not only geographic coverage areas, but also places where journalists interact and where reporting occurs. Place is “not merely a setting or a backdrop, but an agentic player in the game” (Gieryn, 2000, p. 466). Discounting the role of place can lead to misguided normative assumptions about the generalizability of journalism research. This has been noted in studies critiquing the predominance of studies based in the U.S. (Hanitzsch et al, 2011; Wasserman & de Beer, 2009). Even within the U.S., journalism research and practice has been criticized for focusing too heavily on coastal cities (McGill, 2016).

Studies of records officers have also suggested that places matter in the FOI request process. For instance, even as local records officers believe more public records should be available online, they also prefer requests to be made in person (Kimball, 2016). Records officers were more likely to respond quickly and more completely to FOI requests if they believed that their counterparts in neighboring counties had already responded (ben-Aaron et. al, 2017).

The importance of place to journalists and municipal clerks may explain why attempts to generalize FOI processes have been elusive. Attempts to rank FOI laws across geographies have yielded widely varying results (see, e.g., Access Info Europe and Centre for Law and Democracy, 2018; Center for Public Integrity, 2015; World Justice Project, 2015). Recommending best practices for requesters has also been a challenge. An analysis of 33,000 requests found “few features were consistently associated” (Dias, Kamal, & Bastien, 2017, para. 8) with successful requests. Some studies have found that FOI requests that used a formal or threatening tone had better response rates than those with a friendly or neutral tone (Cuillier & Davis, 2012; Grimmelikhuisen, John, Meijer, & Worthy, 2018; Worthy, John, & Vannoni, 2017). Still, “smaller, more rural agencies tend to prefer a more friendly tone” (Cuillier & Davis, 2012), and experienced requesters have also suggested that it can help to “play nice” (Kambhampati, 2018).

Research Questions

These inconsistencies suggest that the places in which FOI requests and negotiations are made matter, because the people and processes involved are highly variable and complex, and because FOI outcomes often depend on the level of trust between individual records officers and requesters. But although prior research has suggested that the FOI request process is often more complex than simply filing a request and waiting for a response (Worthy, John, & Vannoni, 2017), those interactions have been little studied. Requesters and records officers may communicate several times about a single request, and those communications may be formal and informal. Either party may seek more information or clarifications. They may challenge each other's interpretations of public records laws. The following case study thus examines not only the outcomes of FOI requests, but interactions that led to those outcomes.

The literature inspired the following research questions that may help shed light on how local records officers respond to FOI requests:

RQ1: How often are followup interactions required in order to complete requests?

RQ2: Why do records officers initiate followup interactions?

RQ3: How do followup interactions shape the outcomes of FOI requests?

Methods

In this study, requests for dog license records were sent to the 45 municipal governments in Westchester County, New York, which included cities, towns, and villages. Access to municipal records is determined by the state Freedom of Information Law (FOIL). FOIL, like FOIA, includes exemptions for several kinds of records, including those whose disclosure could jeopardize security and personal privacy. However, FOIL also differs from FOIA in several ways. Requests must be acknowledged within five business days, compared to FOIA's 20 business days. FOIL also requires responses to be completed within 20 business days, unless agencies provide an explanation for the delay and specify a date by when responses will be completed. FOIL allows agencies to charge fees of any requester, while FOIA allows fees to be waived for journalists and educators. FOIL also contains an extra resource for requesters who wish to challenge denials. In addition to filing administrative appeals, requesters may also seek guidance from the Committee on Open Government (COOG). The committee does not have enforcement power, but issues advisory opinions to requesters and records officers.

Dog license records were chosen for this study because of their relevance to community journalism and because their availability under FOIL was suggested in legal opinions as well as by their use in news stories by New York media. Dog license records are typically held by local governments. Dogs themselves are popular topics of community journalism coverage, such as in controversies over leash laws and dog parks, notices about lost and found pets, and feel-good stories of heroism and loyalty that inspire interactions with readers (Turner, 2015). Dog license data has been used by community journalists to document local trends in the popularity of particular dog breeds and names (Caroll, 2013; Fair, 2019; Reader, 2013), and to research whether dogs that bite residents are up to date on their vaccinations (Dinan, 2018). In New York,

the availability of dog licenses under FOIL has been established in several opinions by the state COOG. Municipalities had granted similar requests for the same information in the past (Freeman, 1996; Reader, 2013).

The FOIL request for this study sought “All dog licensing data, including but not limited to: dog name, breed, birth year, color, sex, sterilization, vaccinations, and resident's location” (see Appendix). According to state law, dog license applications include, at minimum, the “sex, actual or approximate age, breed, color, and municipal identification number of the dog, and other identification marks, if any, and the name, address, telephone number, county and town, city or village of residence of the owner” (N.Y. Agriculture and Markets Law, Article 7 §109(c), 2013). Most dog owners in the state are required to license their pets, although only an estimated one in five actually do (Reader, 2013). New York’s law applies to all municipalities in the state, except New York City, which has its own law.

Westchester County was chosen for this study out of convenience. The researcher works in the county, and was available to retrieve records in person, when necessary. Most municipalities provided electronic records or sent paper records through the mail, but the researcher also visited three municipal offices to retrieve records. FOIL requests were sent online, either using a form provided by the municipality’s website or by emailing the local records officer, usually the municipality’s clerk. Requests were submitted to all municipalities between April 21 and May 5, 2015.

If municipalities did not acknowledge the request within the five business days as required by FOIL, the researcher attempted to contact the records officer again. The second contact was always via email. If the second contact yielded no response, the researcher attempted to reach the records officer by phone. Subsequent attempts to contact municipalities were based on whether records officers acknowledged the requests, and whether they offered estimates of when responses would be completed. Follow-up contacts were made by email or by phone based on the preferences of each records officer. When phone conversations took place, the researcher noted the dates and topics discussed.

Of the 45 municipalities contacted, 13 subsequently notified the researcher that they had an agreement with another municipality to keep dog license records on their behalf. Thus, responses from the remaining 32 records officers were considered for this study. When municipalities denied the requests partially or fully, the researcher did not pursue remedies such as appeals or lawsuits. After two months of attempts to access records, the researcher stopped trying to contact municipalities that had not completed responses.

Results

RQ1: How often are followup interactions required in order to complete requests?

Followup interactions were required in 25 of 32 municipalities (78.125 percent) in order to complete the FOI request. In other words, only seven municipalities (21.875 percent) responded with decisions granting or denying the request (fully or partially) without additional communications between the researcher and records officers. Some interactions were initiated by the researcher, while others were initiated by records officers.

The researcher contacted 18 of 32 municipalities (56.25 percent) after they missed at least one deadline for responding to the FOI request. As mentioned in the Methods section, New York’s FOIL establishes two types of deadlines for records officers: one for acknowledging

requests, and one for completing them. Ten municipalities (31.25 percent) missed the acknowledgment deadline; 13 (40.63 percent) missed the completion deadline. In some cases, the followup interactions alerted clerks to the very existence of the request. “We don’t check the website that way,” responded one clerk during a followup phone call about an online request that was awaiting an acknowledgment (personal communication, May 8, 2015).

Two municipalities (6.25 percent) never completed the request. That is, they did not provide records, nor did they issue formal denials—rather, they stopped responding to communications from the researcher. One non-responsive municipality had been contacted three times following the initial request; the other, seven.

Records officers initiated interactions with the researcher in 22 of 32 municipalities (68.75 percent). Reasons for those interactions will be described in the following section.

RQ2: Why do records officers initiate followup interactions?

Records officers contacted the researcher for a variety of reasons. If they had missed deadlines, some records officers responded with apologies or explanations for the delays. Other records officers notified the researcher of additional requirements for fulfilling the request. Some records officers responded with questions (the answers to which sometimes prompted notifications of additional requirements), and some records officers wanted to negotiate over which information would be released (which sometimes also involved additional requirements and questions).

Apologies and explanations. Almost all records officers who were contacted about missing deadlines apologized for being late to acknowledge or complete requests within the time mandated by state law. That was true even for the two municipalities that never completed responses. Records officers in both of those municipalities attributed their delays to having too much work or too few employees to handle it. Other records officers or their employees who apologized for delays said they had missed the original request, that the records officer had been on vacation, or that municipal attorneys were evaluating whether any information had to be redacted.

Notifications of additional requirements. Fifteen of the 32 municipalities (46.875 percent) responded that they needed fees or additional information from the researcher. Nine municipalities (28.125 percent) responded that they would charge fees for the records. FOIL allows records officers to charge up to \$0.25 per page for photocopies of records, and may also charge for labor if requests take more than two hours to process. Records officers are not supposed to charge fees when records exist electronically and the requester asks for them in an electronic format. The researcher agreed to pay fees to five municipalities that charged under \$50. For the four municipalities that charged higher fees, the researcher offered to visit their offices in order to inspect the records in person for free. Two municipalities accepted that offer; two others decided to provide the records electronically for free.

Seven municipalities (21.875 percent) required the researcher to submit a statement affirming that the data would not be used for commercial or fundraising purposes. Three municipalities additionally required that the statements be notarized. New York’s FOIL specifies that some information, such as lists of names and addresses, may be withheld “if such lists would be used for solicitation or fund-raising purposes” (N.Y. Public Officers Law, §89 2(b)(iii)). When clerks requested such statements, the researcher provided them.

Questions. Clerks in seven municipalities (21.875 percent) responded with questions, such as:

For what purpose?

Why do you need the information on the dogs that are licensed in Mount Pleasant?

Why does anybody need to know that?

Although New York's FOIL specifies that requesters are not "required to provide a reason or indicate the intended use of the record" (New York Department of State, n.d.), some clerks still asked why the researcher wanted the information. Some clerks indicated they were asking in order to ensure the information would not be used for commercial or fund-raising purposes. When such questions arose, the researcher responded that the requests were for a university research project and journalism course.

Other questions from municipal clerks related to the "residents' location" portion of the request:

What would you be using the owner's addresses for?

I wanted to ask do you really need the resident's location.

Several clerks said they were concerned about how residents of their communities would react if they knew their names and addresses were being released. Did the requester need the street address, or would a ZIP code suffice? When such questions arose, the researcher expressed a preference for street addresses. In some cases, the researcher provided context for the request by referring to projects by news organizations and others that had created searchable maps of popular dog names and breeds by neighborhood (Reader, 2013). "Yeah, some of those dog names are funny" (personal communication, May 4, 2015) responded one records officer, before releasing the records with residents' full addresses included.

Negotiations. While some clerks asked questions about the resident's location portion of the request, others took a harder line:

That information is an invasion of the person and not allowed.

Please be aware that owner information is not subject to FOIL.

I don't think you need the names or phone numbers.

After several clerks raised questions or concerns about the "resident's location" data, the researcher requested an opinion from COOG Executive Director Robert Freeman, who confirmed that "the items that you requested are accessible, with the exception of a home phone number, and so long as you certify that the names and addresses will not be used for solicitation or fund-raising purposes" (personal communication, May 4, 2015). The researcher forwarded the opinion to clerks who had asked questions about the addresses or suggested they would be redacted.

The most contentious negotiations took place with the clerk of one municipality, Bedford, who also served as president of the Westchester Town and City Clerks Association. She called the researcher after she said several other clerks had contacted her about the request. "We deal with FOIL requests all the time, including from the newspapers, and I have never seen this kind

of reaction,” she said (personal communication, May 7, 2015). She also noted that municipal clerks in New York were elected, not appointed, officials, and that it was her duty to “represent the people of my community” (personal communication, May 7, 2015). Finally, she said since the term “resident’s location” was open to interpretation, she would provide only ZIP codes. However, she said she would waive the \$105 fee that she had planned to charge for the records.

Other negotiations occurred as a result of technological challenges the clerks faced. Some clerks were stymied by limits to the size of files they could attach to emails from their municipal accounts. Others responded that, although the information existed electronically, they were not sure how to export it from the software they used to a shareable file. Other clerks requested extra time because they wanted to redact residents’ addresses, but did not know how to do so within their software. The redaction problem was addressed several ways. Some clerks used markers or white-out to obscure each address manually, sometimes on hundreds of pages. One clerk printed out records and cut off the left side of each page. Another clerk asked the researcher to help with the redactions by cutting strips of paper and taping them over the left side of each page. The records officer then photocopied each page and gave the photocopies to the researcher.

05/12/2015 12:40:25 PM		Municipality: Bedford-Westchester Dog ACO/Search Report							
Counter Workstation		Status Dates				Gender			
						Transaction		Rabies Exp	
ID#	Address	Status/Stat Date	Name	Breed	Color	Gender	Expire	TattooNumber	Date
0000000									
1	Katonah NY 10536	Renewal 12/22/2014	Ginger	Terrier Mix	Brown (Liver) White	F	01/30/2009 01/31/2016		05/07/2016
2	Bedford NY 10506	Deceased 08/28/2013	Sassafras	Spaniel	Black White	M	02/21/2007 01/31/2014		03/06/2014
3	Katonah NY 10536	Renewal 01/06/2015	Dutchess	Labrador Mix	Red	F	12/29/2009 12/31/2015		08/13/2015
4	Bedford Hills NY 10507	Deceased 11/06/2012	Henry	American Staffordshire Terrier	Brown (Liver)	M	01/22/2010 01/31/2013		09/11/2012
5	Katonah NY 10536	Gone 12/17/2012	Bobl	German Shorthaired Pointer	Brown (Liver) White	M	12/02/2004 12/31/2012		12/29/2013
6	Bedford Hills NY 10507	Renewal 01/14/2014	Chico	Shepherd Mix	Black Brown (Liver)	M	01/04/2011 01/31/2015		05/11/2014

Figure 1. Excerpt of dog license report with names and street addresses redacted.

Finally, some negotiations occurred with clerks who responded that the requested records did not exist.

We have reviewed the list of records you are requesting. In order to supply this information, it would require us to create a record, as none exists with all of the information that you are requesting. Under FOIL, a government entity is not required to create a new record where none exists.

We do not have the ability to generate reports you would need to contact our software company.

The researcher responded to both of the above records officers by saying that she could inspect individual dog license applications. Records officers in both municipalities then responded by providing dog license reports in similar formats that most other municipalities had provided.

RQ3: How do followup interactions shape the outcomes of FOI requests?

When negotiations were involved, followup interactions often yielded better results for the requester. Three clerks who initially charged fees waived them after speaking with the researcher; two other clerks reduced their fees. Two clerks who initially claimed they could not create summary reports of their dog license data later did so.

Followup interactions did not always lead clerks to change their minds. As mentioned earlier, two clerks never completed a response to the FOI request, despite multiple interactions. Also, clerks who said that they would withhold the “resident’s location” portion of the data, or provide only general information such as ZIP codes, generally stuck to those decisions, even after receiving the opinion from the COOG.

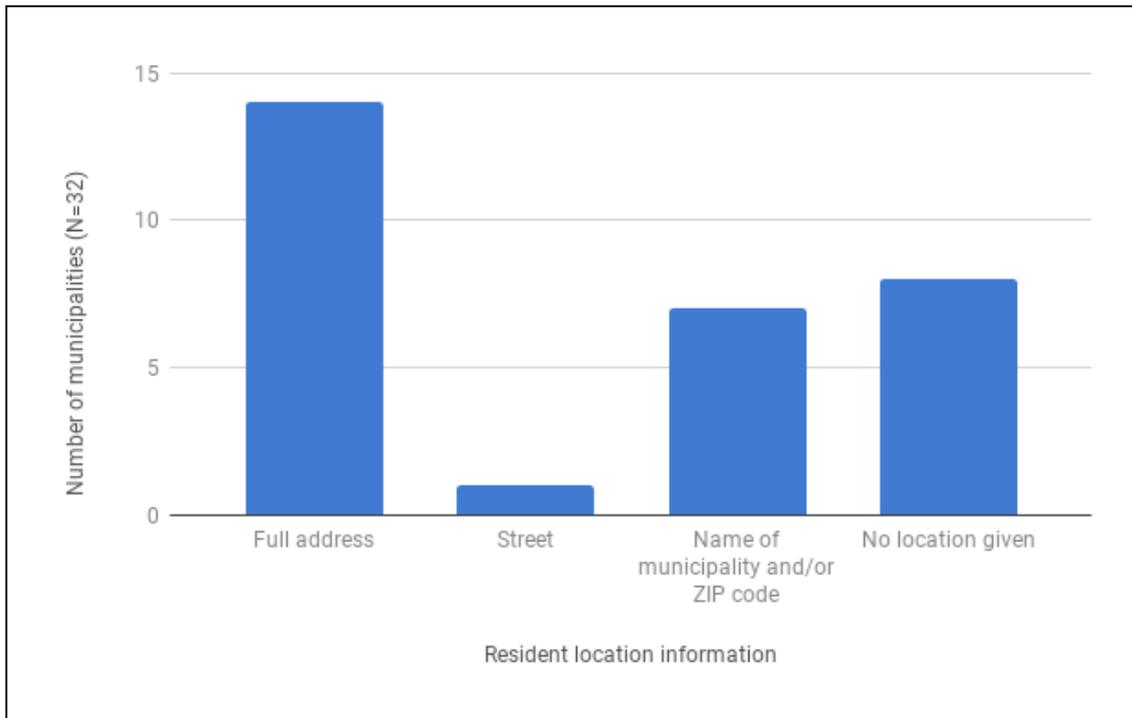


Figure 2. Type of location information provided by municipalities.

In many municipalities, however, it is difficult to know the extent to which followup interactions made a difference. Did reminders about FOIL’s deadlines prompt action, or would the clerks have responded soon anyway? When clerks asked for the purpose of the request, did they find the answer reassuring, or concerning? It was not always clear.

Discussion

This study in some ways resembles an FOI audit, in which identical requests are sent to multiple agencies across geographies or bureaucracies in order to compare their compliance. Unlike most FOI audits, however, this study also gathered a second type of data: interactions with records officers following submission of the requests.

This data is important, because, as this study suggests, followup interactions often occur. That means, regardless of how carefully FOI requesters choose their words, the decisions of records officers may hinge upon additional, and often impromptu, interactions. For community journalists, each interaction carries risk—because it suggests a tension between the requester and the records officer that needs to be resolved. Those tensions can jeopardize relationships between community journalists and municipal clerks, who are important news sources.

Requester-initiated interactions may include notifications when records officers miss deadlines. While some of the clerks contacted in this study may not have been bothered by the reminders, some likely were. After all, reminders of missed deadlines suggest that records officers are not complying with the law. But requesters may have to initiate interactions that are even more fraught: challenging the decisions of records officers who withhold information. In this study, challenges were made only informally, during negotiations with clerks. However, challenges *could* have been made in other municipalities whose clerks merely supplied incomplete information without explanation. The most common types of data that were missing were dogs' birth years and sterilization information. Conversations with clerks later revealed that the software most of them used to manage dog license records did not keep these types of data, even though such information is required by state law to be submitted on dog license applications. In the end, only three of the 32 municipalities in this study (9.375 percent) provided all information requested.

Even when requesters do not initiate additional interactions, records officers may. They may notify requesters of additional requirements, ask questions, or attempt to negotiate the type or amount of information disclosed. Those interactions can also be delicate for community journalists to navigate, particularly if they believe that records officers are not adhering to, or misinterpreting, public records laws.

At the heart of these tensions are often competing viewpoints on the relationship between FOI and the best interests of the community. Journalists may see FOI as a tool to explore and make transparent a broad range of community information. While municipal clerks may support transparency as a general principle, they may not always believe complying with FOI laws to be in the best interests of their communities. Requesters who act in bad faith may anger community members. Requesters who file frivolous or complex requests force clerks to take time away from serving their communities in other ways.

These concerns were reflected in the questions and negotiations that emerged in this case study about the reasons for the researcher's request. FOIL, like many other public records laws, specifies that requesters do not have to provide a reason. At the same time, FOIL also requires that requesters "reasonably describe" the records they want. COOG additionally offers that agencies should follow up with requesters "if the request is too vague to answer" (New York Department of State, n.d.). The more "reasonably" a requester can describe records, the more obvious the purpose for requesting them will be. Records officers in this study often asked the researcher her purpose for requesting the dog license records. The president of the Westchester Town and City Clerks Association said she often asked this question of requesters in order to

make sure she was providing the information they actually wanted. Requesters, she explained, do not always understand how information is organized in municipal records—so knowing the purpose can help her locate records more efficiently and help the requester access them more quickly.

However, this may present a dilemma for community journalists. Disclosing a reason may be in their best interests, if it results in faster access to information and continued friendly relations with records officers. However, journalists who disclose their purposes may find records harder to access. If the records reflect poorly upon the government—or even if the perception is that they *might*—records officers may use their broad powers of interpretation to deny the requests. On the other hand, journalists whose purposes appear unserious risk being labeled “nuisance” requesters. While some records officers may be reassured to know that the records were requested for a lighter human-interest story, others might be frustrated that they had to spend time and effort to fulfill the request.

The Role of Place, Revisited

The expectation that community journalists should act as “friendly neighbors” to sources presents potential challenges in the FOI request process. However, their deep knowledge of their communities may also be a benefit, because they may already have a relationship with their municipal clerk and understand place-specific challenges that may arise when trying to access information through FOI requests.

As Usher (2019) and others have argued, place plays an important role in news production. Place is not only a physical location. Place can also be defined other ways, including “the ways in which journalists, audiences, and institutions interact with their environments, build routines, and construct cultural meaning” (Usher, p. 91). In this study, place affected the responses of municipal clerks in several ways. First, clerks were wary of the researcher because of their lack of prior interactions with her. Place also played a role in the difficulties some clerks encountered with the software their municipalities had purchased to manage dog license records. At least 20 municipalities used the same program. The clerks had varying levels of familiarity and comfort with the software, which meant that complying with the FOI request was much more difficult and time-consuming for some of them, particularly those who decided to redact some of the data.

Some clerks also mentioned a public records controversy in Westchester County that was still fresh in their memories. In 2012, the *Journal News* newspaper published a map that displayed the addresses of all gun license holders in the county. The map was based on records acquired through FOIL requests. A public backlash ensued—editors received death threats, and the newspaper later removed the map from its website. The controversy led state lawmakers to pass the SAFE Act, which allowed gun license holders to opt out of public databases. Clerks in Westchester County said the *Journal News* story had made them more reluctant to release residents’ addresses.

Finally, some place-specific challenges were affected by state regulations. Unlike records officers at the state and federal level, municipal clerks in New York (and in many other states) are elected positions. Therefore, their job security depends on maintaining the support and trust of their residents. The particulars of FOIL also affect municipal clerks by establishing what information may be requested, how soon records officers must respond, and setting other

requirements they must follow. Additionally, FOIL specifies that, although COOG may issue opinions in FOI disputes, those opinions are not enforceable.

Conclusion

This study examined the often complicated and delicate interactions that take place between FOI requesters and local records officers—in this case, municipal clerks. Understanding these interactions can be useful to community journalists who wish their FOI requests to be taken seriously without jeopardizing the friendly relationships they wish to maintain with government officials. By anticipating the types of interactions that might follow the submission of requests, as well as the place-specific reasons that records officers may hesitate to comply, community journalists may be able to mitigate concerns while still accessing the information they want.

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Appendix: FOIL Request

Under the New York Freedom of Information Law, N.Y. Pub. Off. Law sec. 84 et seq., I hereby request the following public records:

All dog licensing data in _____, including but not limited to: dog name, breed, birth year, color, sex, sterilization, vaccinations, and resident's location.

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$10. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of government operations and activities. This information is not being sought for commercial purposes.

In the interest of expediency, and to minimize the research and/or duplication burden on your staff, please send records electronically if possible.

The New York Freedom of Information Law requires a response time of five business days. If access to the records I am requesting will take longer than this amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for considering my request.