Crack the Code of Government Transparency

FOIA Strategies Workshop - HOPE XV

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Tip 1: Treat FOIA as a Puzzle to be Solved

- Embrace the challenge and seek creative solutions in the FOIA arena
- There is always another approach to try
- "No" doesn't always mean no
- You are player one, with unlimited lives
- You can coordinate with others

FOIA is a New But Familiar Puzzle (1)

- Facing a relatively unknown system

- Exploration and mapping

- Feeling out the structure and defenses

- Devising ways to overcome them

ZORK I: The Great Underground Empire
Infocom interactive fiction - a fantasy story
Copyright (c) 1981, 1982, 1983, 1984, 1985, 1986 Infocom, Inc.
All rights reserved.
ZORK is a registered trademark of Infocom, Inc.
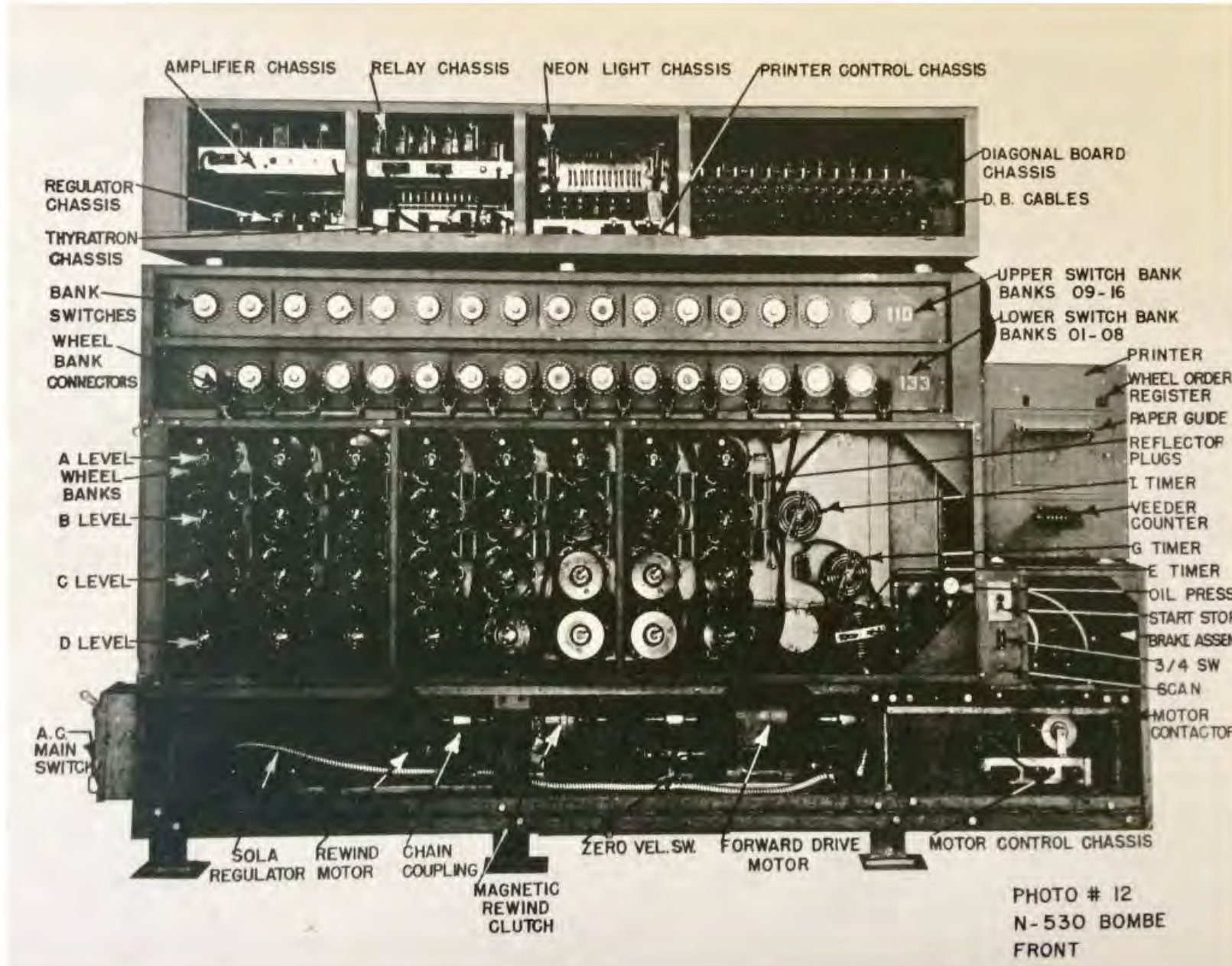Release 52 / Serial number 871125 / Interpreter 8 Version J

West of House
You are standing in an open field west of a white house, with a boarded front door.
There is a small mailbox here.

>_

ZORK (1980s), successor to Colossal Cave Adventure (1976-77)

FOIA is a New But Familiar Puzzle (2)

- Exploration

- Puzzles / Complex riddles

- Strategy board games

- An information scavenger hunt

- Pattern Recognition

- Cryptology

- Traffic analysis
  - The process of extracting information from patterns in the flow of communications

US Navy Cryptanalytic Bombe – World War II

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A Few Examples of Useful Requests

- Incident Logs
- Committee mtg minutes
- Committee agendas
- Lists of internal reports
- Intranet pages
- Film/video catalogues
- List of training videos

- Weekly update emails
- Talking points
- Omitted serial # docs
- FOIA Logs
- MDR Logs
- Tech Report Bibliographies
- Media Inquiry Logs

More Examples of Useful Requests

- Digital copy of a specified database
- Transition briefings for the incoming administration
- Listing of investigations closed in 20XX
- Copies of the reports from closed investigations
- Each list of handbooks, manuals and guides
- Congressional inquiry logs
- List of oral histories maintained at the agency

Still More Examples of Useful Requests

- Periodic internal reports on an activity (weekly/bi-weekly/monthly/quarterly/semi-annual/annual)
- Agency employee newsletters
- Deskbooks or desk guides
- Ethics waivers
- Listing of audit reports
- Strategic Plans

More Examples of Useful Requests

- List of theses and dissertations of government colleges
- 10 oldest FOIA pending requests or FOIA appeals
- Title pages of the 10 oldest classified documents
- IG "Management Alerts" during 20XX
- FBI File on [significant person or organization]
- Vintage Security Posters

State Listings of rejected vanity license plate applications

For more request ideas and strategies
see Government Attic and other sites

Tip 2: Reformulate Your Need for Information Into a Records Request

- Don't ask <u>questions</u>. Ask for records.

- Figure out which records they <u>must</u> have versus <u>may</u> have.

- E.g., if they respond to Congressional inquiries, they keep a log; anything with serial numbers has a log

- There are always lots of periodic reports.

- Records describing other records are very useful (index, list, inventory, bibliography, log, etc.)

Tip 3: FOIA Ideas Are Everywhere

- Read between the lines
    - in News stories
    - in Agency reports, agency contracts
    - in Congressional Budget Justifications (agency asking for money for…)
    - in Electronic Data Inventories (EDIs)

- Statistics and data means that databases and records exist.

Tip 4: Tap Agency Enterprise Data Inventories

- EDI: complete list of data assets generated/managed/used by an agency

- Names, description, access link, update frequency, metadata, owners

- 24 federal agencies are required by law to publish EDI's, but others do also

- **Data.gov** alone holds 298,016 federal/state/local datasets
  - But this is only those datasets that are published; others are available via FOIA

- EDI's are sometimes posted at **data.agencyname.gov** or **agencyname.gov/data** or through a search

Agencies have posted their Data Inventories, often in JSON file format, which you can convert to Excel or CSV

Open Data Catalogue

This page contains the Department of Energy's Public Data Listing in JSON format.

DATA   REPORTS   OPEN GOVERNMENT   CONTACT

DATA CATALOG

🏠 / Datasets   **Organizations**

🏠 / 🏛 / Department of Energy

Federal

Department of Energy
There is no description for this organization

Followers	Datasets
0	3.1k

Topics

Climate - 14

Topic Categories

Energy Infrastructure - 6
Energy Resources - 3
Energy Conversion - 1
Energy Demand - 1
Energy Supply - 1
Energy... - 1

Dataset Type

geospatial - 24

Tags

___ - 3191
geothermal - 1137

Datasets   About

Search datasets...

3,191 datasets found

Order by:
Relevance ⌄

U.S. Electric Utility Companies and Rates: Look-up by Zipcode (2020) 📈 341 recent views

This dataset, compiled by NREL using data from ABB, the Velocity Suite and the U.S. Energy Information Administration dataset 861, provides average residential, commercial and...

CSV   CSV   ZIP   HTML

Electricity Data and Statistics Application Programming Interface (API)
📈 143 recent views

Monthly, quarterly, and annual data on electricity generation, consumption, retail sales, price, revenue from retail sales, useful thermal output, fossil fuel stocks, fossil...

API   HTML   API

City and County Energy Profiles 📈 121 recent views

The City and County Energy Profiles lookup table provides modeled electricity and natural gas consumption and expenditures, on-road vehicle fuel consumption, vehicle miles...

XLSB   HTML   HTML   HTML   XLSB

City and County Commercial Building Inventories 📈 81 recent views

The Commercial Building Inventories provide modeled data on commercial building type, vintage, and area for each U.S. city and county. Please note this data is modeled and more...

HTML   PDF   HTML   HTML   XLSB   XLSB   3 more in dataset

U.S. Electric Utility Companies and Rates: Look-up by Zipcode (2022)
📈 80 recent views

This dataset, compiled by NREL using data from ABB, the Velocity Suite

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Tip 5: To Know Where to Look, Understand Agency Functions and Responsibilities

- Discover agency roles and pinpoint pertinent agencies

  - Multiple agencies might intersect with a single topic

- People asking for records on a topic often know the agency players

- If not, you can ask other people who are interested in that topic

- Use news and internet searches to find the responsible agencies for a topic

- Org charts can tell you what parts of the agency are involved

Tip 6: Navigate FOIA.gov to find Agency FOIA Contacts and to File Requests

- Agencies can make it hard to find FOIA contacts on their websites

  - Some agencies hide the addresses or provide conflicting addresses on their website

- FOIA.gov is a great starting point to locate agency FOIA contacts

  - Go to the agency page and look on the left hand side

- Nearly every state provides a complete list of state agencies

- State and Local agencies websites often provide a FOI point of contact

- The rules vary by state – check

FOIA.gov

Learn about FOIA ⌄   Before you request ⌄   Search tool ⌄   Create a request   Agency FOIA data ⌄   CFO Council ⌄   Agency login

The basic function of the Freedom of Information Act is to ensure informed citizens, vital to the functioning of a democratic society.

This site can help you determine if filing a FOIA request is the best option for you and help you create your request when you're ready.

Start your FOIA journey

Learn about the FOIA process

Use our search tool to find public records or the correct agency

Start a request with a specific agency

Reporters' Committee Open Government Guide

REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS

OUR WORK **+**   LEGAL RESOURCES **+**   FREE PRESS TOPICS **+**

Open Government Guide

The **Open Government Guide** is a complete compendium of information on every state's open records and open meetings laws. Each state's section is arranged according to a standard outline, making it easy to compare laws in various states. If you're a new user of this guide, be sure to read the Introduction to the Open Government Guide. The Open Government Guide covers state laws. We also have a separate FOIA Wiki that covers the federal government.

See something that needs updating? Please email guides@rcfp.org, so we can fix it!

Alabama

Alaska

Arizona

Arkansas

Tip 7: Maintain a Copy of Each Request You Submit, Even Portal Requests

- Some agencies will respond without mentioning the subject of the request

- Some agencies require a copy of the request "letter" to file an appeal

- Keep copies of interim communications to/from the agency

- The acknowledgement letter provides a case number to help in tracking

Tip 8: **Try to Use Agency FOIA Portals, Despite the Extra Burden**

- Some agencies push you to use their FOIA portal

- Portals offer useful tracking features and more direct comms with the agency

  - But some require registration, authentication, password churn

- Most agencies permit letters or email as alternatives to FOIA portals

- Most portals allow you to view the list of your pending requests

Typical Agency FOIA Portal

Many public records requesters regard nonprofit organization website Muckrock.com as a convenient way to file requests with federal, state and local agencies

Tip 9: Monitor Your Requests on a Tracking Spreadsheet

Here are some suggestions:

- *Agency Name*
- *FOIA Case Number*
- *Agency POC*
- *Subject of Request*
- *Status Check Result*
- *Last Status Date*

- *Date Acknowledged*
- *Response Date*
- *Appeal Date*
- *Appeal Case Number*
- *Notes Field*

Tip 10: Ask For Estimated Completion Dates

- Agencies are required by law to provide an ECD, but some won't

- Even so, you can also ask for queue position (e.g., 12th out of 137)

- The ECD is an estimate only – it's not binding

- It operates as a way to keep requests from being forgotten

The Freedom of Information Act … requires agencies to provide a requester with an estimated date of completion (EDC) by which the agency expects to complete work on a request when the requester asks for one.

National Archives and Records Administration

Tip 11: Respond Promptly to "Still Interested" Letters to Avoid Closure

- Caution: Sometimes the "ask" is buried in a letter or email

- Make sure your expression of continued interest is clear and prompt
    - If you don't respond within 30 days, the agency can close the request
    - If they cancel your request, you can ask them to reopen it and they will

- Providing requesters less than 30 days notice violates DOJ guidelines

- If you get a "Still Interested" letter, you can ask the agency for an Estimated Completion Date and/or queue position

Tip 12: Keep FOIA Requests Concise, Specific and to the Point

- Avoid unnecessary details and excess language
- Keep requests specific rather than using "any and all" (exception: FBI)
- Identify specific agency offices likely to have the records (use org charts, etc.)
- Set a reasonable timeframe (e.g., Jan 2022 to present)
- Anticipate reasons for denial: e.g. ask for "each list" rather than "the list"
- Learn from the subjects of successful requests from others, and adopt similar strategies
- If relevant, submit requests to multiple agencies to cover all bases

Tip 13: Lock Down Your Fee Category

- Specify your fee category in your request and justify it

- For instance: *As an individual making a noncommercial request, I fall under the "All Other Requesters" fee category, and I am willing to pay up to $50 if required.*

- In practice, most non-commercial requests no longer get charged fees

- Agencies are not permitted to impose search fees for noncommercial requests processed after the 20/30 day deadline

- A few agencies will automatically assign the costly commercial fee category

Tip 14: Avoid Asking For a Fee Waiver

- The current fee structure gives no real advantage for fee waivers

    - Noncommercial requesters are not charged search fees after 30 days, review fees never

    - Duplication fees are rare in the digital era

- Agencies can and do use fee waiver requests as grounds to delay processing

- Paradoxically, a fee waiver request can increase the costs of a request

- Possible exceptions: news organization or nonprofit groups

Tip 15: Manage Difficult Requests Using Negotiation

- Identify and leverage the processing challenges faced by the FOIA Office

- Discuss to learn which records are simpler to retrieve or process
  - For example, the earlier years of the data may be paper in boxes in storage – Just get the more accessible data as a first cut
  - A spreadsheet may have one column that contains lots of personal data to redact - offer to forego that column entirely

- Collaborate with the FOIA Officer -- help them out but get what you want

- Aim for a win-win outcome

- Start with a smaller portion of the request – you can go back for more later

Tip 16: Understand the FOIA Office's Challenges Related to Your Request

- Initiate early discussions for complex, non-standard requests

- Ask about specific hurdles your request may cause

- Demonstrate flexibility and offer viable solutions to adjust your request

- Build rapport –- foster a positive relationship

- Consult with the Agency's FOIA Public Liaison for guidance and discussions

- Some agencies' FOIA staff are extremely helpful; others are not

Sidebar: **Administrative Processing Notes**

- You can use FOIA to get administrative processing notes and emails to learn what's going on behind the scenes

- Typical language: "*I request the following records in the agency FOIA Office: a copy of the contents of the administrative tracking file for my request 24-xxxxx, such as tracking notes, processing notes, memos, etc., and also any emails to, from, or within the FOIA office mentioning this request number.*"

- You may discover a lengthy back and forth exchange discussing reasons for the delays, or if certain records are to be considered responsive to your request

Tip 17: Limit the Scope of Your Request (1)

- Limit the records timeframe; select certain offices for search

- Request a sample set – a follow up request can ask for more

- Exclude problematic spreadsheet columns or data fields

- Try asking for only the title/cover page, and first 10 pages of each document

Tip 17: Limit the Scope of Your Request (2)

- For extensive/complex documents, ask for just the table of contents

- For emails: omit attachments, compilations of news clips, calendar notices

- For period reports, ask for the three most recent examples

- Resist unhelpful agency suggestions to narrow a search by combining keywords with AND instead of OR
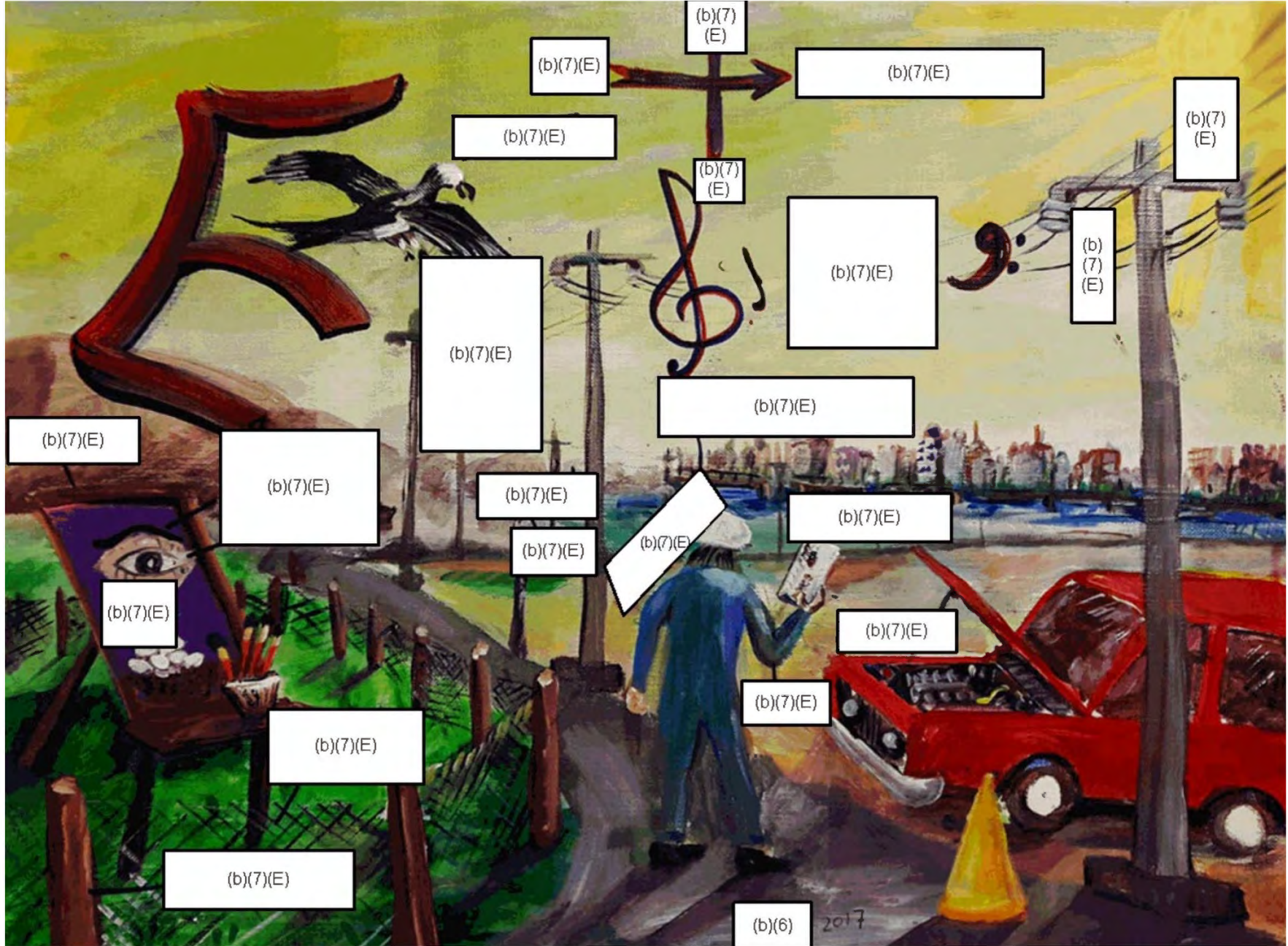   - This can hobble your request

Tip 18: Challenge "No Record" Responses by Demonstrating That Records Exist

- Provide proof or instances of the records being mentioned or released

- Conduct site-specific searches on the agency website

- Review agency budget requests (CBJ's) and annual reports

- Internet and news database searches, archive.org full text search, hathitrust.org, worldcat.org, etc.

- Explore repositories: Government Attic, The Black Vault, Document Cloud

- Search federal contract data on USAspending.gov

Tip 19: Ensure Agencies Provide Usable File Formats

- Request high quality scans at adequate resolution (dpi)
- Challenge the mindless color scans of b/w pages
- Insist on native file formats if needed for better useability
- Ask for black redactions, not white redactions
- Appeal or challenge locked files or files with restrictions
- Challenge agencies that use colored boxes for redactions, or add a spiderweb of lines connecting exemptions to text content
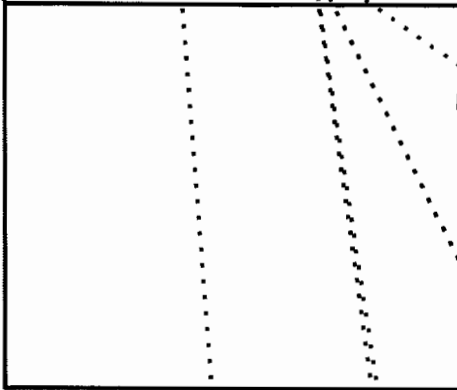
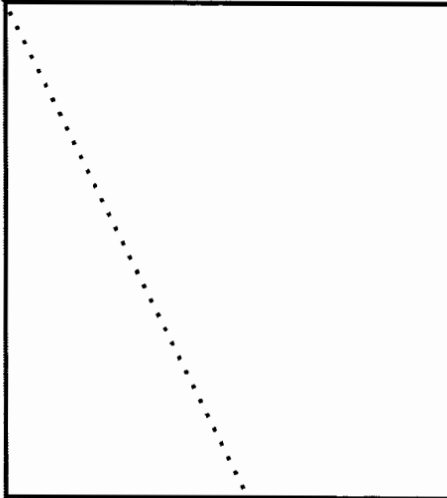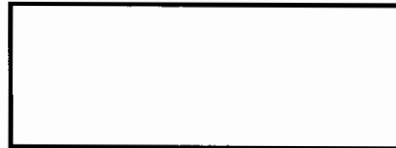Source: Muckrock.com 2023 Foilies Awards; Investigative Journalist Jason Leopold

SECRET SPOKE

possibility. Sunspots? Oh, come on! Everyone KNOWS that sunspots don't have an immediate effect!
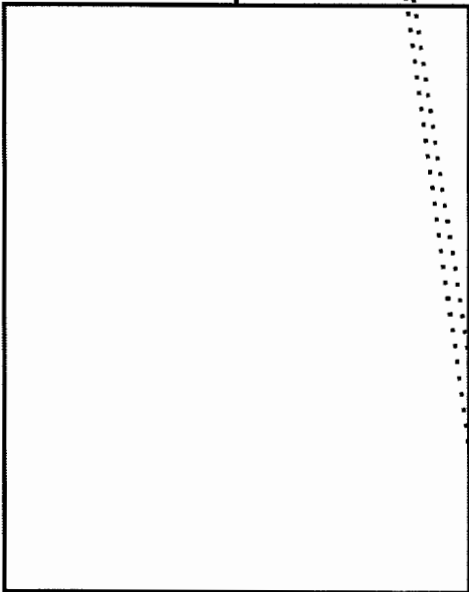
Ridiculous!

(U) A little research revealed the following:

(U) As luck would have it, Murphy's Law was operative on that day. A US field station in the vicinity issued the SPOT report marked {1} on the facing page.

(U) Approximately one hour later, the same station issued the follow-up marked {2} on the facing page.

To say that there was opposition to the view that atmospheric disturbance was the culprit would be putting it mildy, indeed. But the telling piece of evidence, made available by the NSOC Weather Desk, was received in a message from the Space Environment Services Center at Boulder, Colorado. It was a report of a major solar flare that peaked at 0203z on the day in question. This event was but one of many over a several-day period, but its timing was such that Mother Nature was able to fool the system, at least, initially.

Our summary appears in {3} on the facing page.

Still, our brothers and sisters in some quarters of the intelligence community saw something more sinister in this than a mere sunspot. But, a trip to the good old NSA Library turned up a tome that saved the day, providing a technical explanation when no other would do. Here is a copy of the

This indicated to our analysts that the answer lay not in willful suppression of tracking, but inability to communicate. What was the cause, then? Jamming? That was not considered a

Spiderweb redaction technique used by some agencies

DOD-NSA-20-0351-E-000039

	Year	Product ID	Title
(b)(7)(E)	2017	BUL-203-17	K2 Abuse: Up in Austin, But Down Statewide in Texas
	2017	BUL-204-17	United Kingdom: Seizure of Fentanyl Manufacturing Laboratory Sounds Alarm Bells
	2017	BUL-205-17	Noscapine Seized at Brownsville, Texas, Port of Entry
	2017	BUL-206-17	Colombian Drug Trafficking Organizations Operating in Peru
	2017	BUL-207-17	Increasing Role of Zelle in Monetary Transactions
	2017	BUL-208-17	Cocaine-Related Overdose Deaths Increasing in MD
	2017	BUL-209-17	BUL-209-17 K2 Overdoses Hit Record Numbers in NJ
	2017	BUL-210-17	Bandidos Look to Expand Presence in New Mexico
	2017	BUL-211-17	Bottled Up Methamphetamine in ████████████
	2017	BUL-212-17	Ride Hailing Applications Exploited in the Phillipines
(b)(7)(D); (b)(7)(A)	2017	BUL-213-17	Philippine Congressional Probe into BOC Sheds Light on Port Vulnerabilities
	2017	BUL-214-17	Cartel de Jalisco Nuevo Generación May Aggressively Counter Domestic Drug Law Enforcement
	2017	BUL-215-17	Couriers Use Military IDs for Access
(b)(7)(E)	2017	BUL-216-17	Slippery When Wet - An Overview of the Dallas-Fort Worth Methamphetamine Threat
	2017	BUL-217-17	The St Louis Division Drug Situation January-June 2017
	2017	BUL-218-17	Dark Net Marketplaces ████████ in Response to Law Enforcement Takedowns
	2017	BUL-219-17	Money Launderers Recruit Tour Groups to Smuggle Drug Proceeds from Australia to Canada
	2017	BUL-220-17	La Fuerza Coahuila
	2017	BUL-222-17	████████ Methamphetamine in ████████
(b)(7)(D)	2017	BUL-223-17	DEA-Led Operations in Mexico Denies Sinaloa Cartel Hundreds of Millions in Drug Revenue
	2017	DIB-001-17	Paradigm Shift in the Colombian Cocaine Threat: Emergence of the Pacific Cartel and the FACRIM, 2016-2020
	2017	DIB-002-17	Bitcoin's Advantages are Changing how Trade-Based Money Laundering is Conducted between the United States, China, and Latin America
	2017	DIB-003-17	The Central American Pipeline: How Drug Money is Moved Through Guatemala
	2017	DIB-004-17	Renewed Inter-Cartel Violence in Tijuana ████████ in Critical Drug Smuggling Corridor
	2017	DIB-005-17	Falling U S Price of Methamphetamine Forces Mexico's Drug Cartel to Pursue Market and Product Diversification
	2017	DIB-006-17	Los Guerreros Unidos Capitalizes on the U S Heroin Epidemic to Develop into a Transnational Criminal Organization of Growing Concern
	2017	DIB-007-17	The Curious Incident of Shifting Philippine Methamphetamine Prices
	2017	DIB-008-17	Emergence of the Asian Money Brokers in New Jersey
	2017	DIB-009-17	Illicit Drug Sales on the Dark Web Challlenging Traditional Retail Markets
	2017	DIB-010-17	(U) Dominican Trafficking Groups Cement Role as Leaders of Mid-Level Drug Distribution in Northeastern United States
	2017	DIB-011-17	Understanding ISIS's Relationship with Counterfeit Captagon
	2017	DIB-012-17	(U//FOUO) Letters of Credit Exploited to Further Trade-Based Money Laundering
	2017	DIB-013-17	(U//FOUO) Chinese Capital Flight Brokers and Money Launderers Likely Exploiting Over-the-Counter Bitcoin Trading Industry
	2017	DIB-014-17	Colombian Cocaine Production Expansion Contributes to Rise in Supply in the United States
	2017	DIR-001-17	2016 National Drug Threat Assessment - SUMMARY
	2017	DIR-002-17	New York City Street Gangs and the Drug Trade
(b)(7)(D)	2017	DIR-003-17	The Drug Situation in the New England Field Division: July - December 2015
	2017	DIR-004-17	Paraguay: Cocaine Trafficking by Non-Commercial Aircraft
(b)(7)(D)	2017	DIR-005-17	████████████████████
	2017	DIR-006-17	Pennsylvania Prescription Drug Monitoring Program Trends, 2014-2015
	2017	DIR-007-17	"Risky" Clients ████████ May Move to Chinese Underground Banking Systems
	2017	DIR-008-17	The Drug Situation in the Houston Division
(b)(7)(D)	2017	DIR-009-17	New Fentanyl/Stimulant Combinations and Synthetic Drugs Detected in New England
	2017	DIR-010-17	Decreasing Cocaine Prices in the Atlanta Field Division
	2017	DIR-011-17	████████████████
(b)(7)(D)	2017	DIR-012-17	The Drug Situation in the New Jersey Field Division: January - June 2016
	2017	DIR-013-17	Cartel and Gangs in Chicago - Unclassified
	2017	DIR-014-17	████
	2017	DIR-015-17	The West Virginia Drug Situation
	2017	DIR-016-17	Growing Tramadol Trafficking and Consumption in West Africa
	2017	DIR-017-17	2017 Office of the Narcotics Control Board Drug Trafficking Enforcement Goals for Northern Thailand
	2017	DIR-018-17	2015 National Drug Price and Purity Data
	2017	DIR-019-17	Mexico: Cocaine Trafficking Along the Pacific Coast
	2017	DIR-020-17	Drug Slang Code Words
	2017	DIR-021-17	The Drug Situation in the New England Field Division: Jan - Jun 2016
	2017	DIR-022-17	(U) The Drug Situation in the Caribbean Division: January-June 2016
	2017	DIR-023-17	The Opioid Threat in the Chicago Field Division
(b)(7)(D)	2017	DIR-024-17	West Virginia Drug situation
	2017	DIR-025-17	The Drug Situation in the Houston Division: July - December 2016
	2017	DIR-026-17	████████████████████
	2017	DIR-027-17	████████████████████
	2017	DIR-028-17	The Drug Situation in the New Jersey Division - July-December 2016
	2017	DIR-029-17	2016 Washington Division Methamphetamine Assessment
	2017	DIR-030-17	Assessment of Israeli Organized Crime Involvement in Drug Trafficking
	2017	DIR-031-17	United States: The Gulf Cartel's Areas of Influence and Impact in the United States

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Tip 20: Appealing Denials is Often Effective (1)

- It's important to take the time to make a good case for your appeal

- Understand the exact reasons for the withholding

- Consult the applicable section(s) of the DOJ FOIA handbook (online) to help determine if the denial was justified

- If you received a "no records" response, scrutinize the request language for overly technical interpretation or parsing of the request language

Appealing Denials is Often Effective (2)

- Engage with participants on the FOI-L email listserv for advice

- Highlight any public interest factors that support release of the records

- The passage of time sometimes can make the records more releasable

- Collaborating with Bing Copilot can be helpful in re-wording the appeal story more clearly and persuasively, and folding in useful arguments

Appealing Denials is Often Effective (3)

Some questions you can raise: Did the agency:

- …describe applying the required foreseeable harm test?
- …describe applying the required presumption of openness?
- …describe considering use of its discretion to release records?
- …release all segregable releasable portions?
- …release all factual materials within materials deemed deliberative?
- …act in the public interest when it denied access?
- …act reasonably in its decision?
- …fail to recognize that similar records have been previously released?

Bonus Tip: **Share Records and Collaborate for Greater Impact**

- Share findings
- Leverage expertise in interpreting complex requests
- Crowdsource analysis of the records
- Agencies can impede a request, but it's harder to block 2 or 3
- You can file parallel requests for the same thing with others
  – permissible as long as you are not doing it to evade fees

FOIA Bill of Rights:
An Idea Whose Time Has Come

Proposal for a FOIA Bill of Rights

COMMUNICATION AND TRANSPARENCY

1) Requesters have the right to a response letter that includes the case number, the subject of the request, and the administrative appeal rights.

2) Requesters have the right to an estimated completion date and their position in the processing queue upon request.

3) Requesters have the right to know the total number of pages withheld from a partial or full denial.

FOIA Bill of Rights

OPENNESS AND FAIRNESS

4) Requesters have the right to have requests processed in accordance with the presumption of openness, and the foreseeable harm test applied.

5) Requesters have the right to seek email searches without undue constraints.

6) Requesters have the right that release decisions are based on actual personal examination of responsive documents and not solely on second-hand information or speculative or hypothetical judgments.

FOIA Bill of Rights

RECORD QUALITY

7) Requesters have the right to receive records not locked or encumbered by file restrictions, unless a legitimate reason for doing so exists.

8) Requesters have the right to released records scanned with reasonable care, and with reasonable image quality under the circumstances

9) Requesters have the right to receive digital records in the format of their choice, if the agency can produce that format without extraordinary effort.

FOIA Bill of Rights

PROCESSING TIMELINESS

10) The agency must process referred or remanded requests according to the original submittal date.

11) The agency must retrieve requested records promptly after submission, to avoid loss or destruction of records if there is a lengthy delay in processing.

FOIA Bill of Rights

FEES

12) Requesters are owed a good faith fee categorization, and agencies should consult with the requester for clarification of the fee category if the agency is uncertain.

13) The agency must not charge noncommercial requesters for review fees.

14) Requesters have the right to a complete and detailed fee breakdown.

Questions?

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