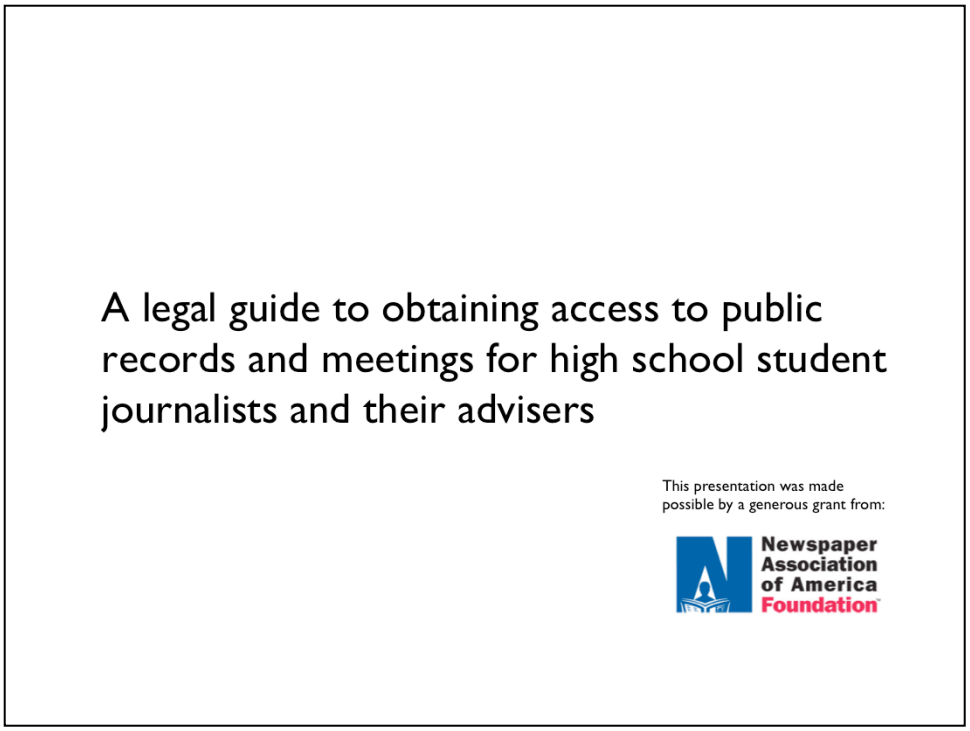
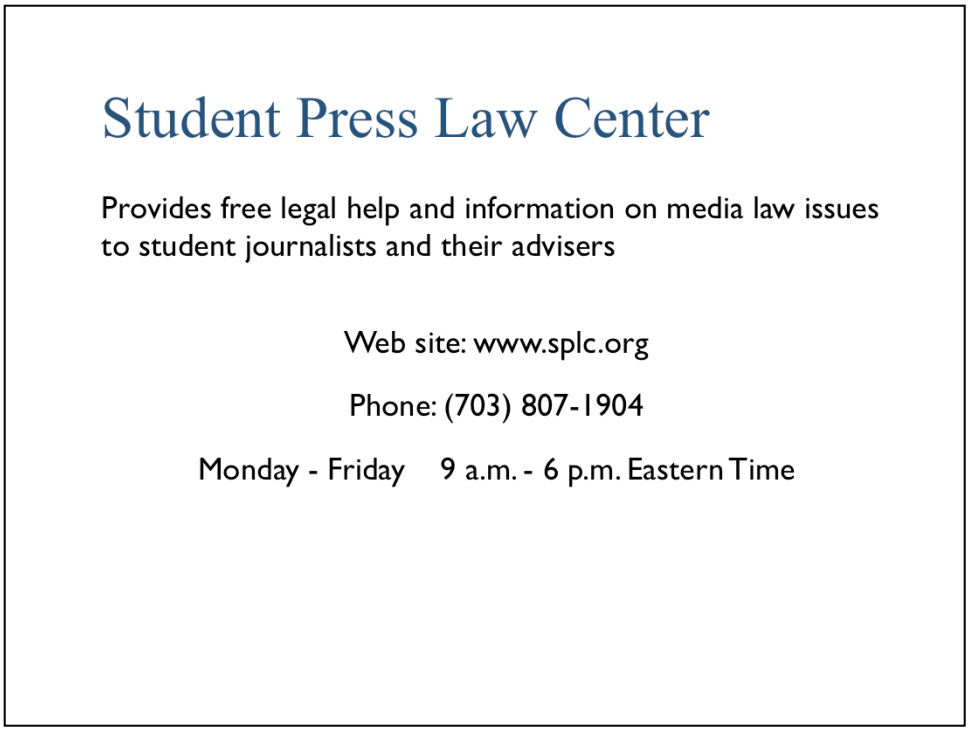
[Note to Presenter: The notes that follow work as either a presentation script or as preparatory material for the presenter. If you're reading the notes as a script and allow for moderate discussion, the full presentation should last between 25-35 minutes.]



This presentation provides a brief overview of freedom of information law — and the process for obtaining access to public records and meetings — for high school student journalists. Allowing for a few questions or comments along the way, it should last about 1/2 hour.



This presentation will not make you an FOI law expert. What it will do, we hope, is help you understand the basic idea behind freedom of information law and provide the knowledge and tools you need for obtaining access to common government records and meetings of interest to high school journalists.

For those situations where an expert is required, you may want to keep the contact information for the Student Press Law Center handy. The SPLC is a nonprofit organization based just outside Washington, D.C. Since 1974, the Center has provided free legal help and information to student journalists and their advisers on a variety of media law issues. Much more information about FOI law is available on the SPLC Web site and in various publications produced by the Center. In addition, "live" help is generally available from the SPLC staff Monday through Friday.

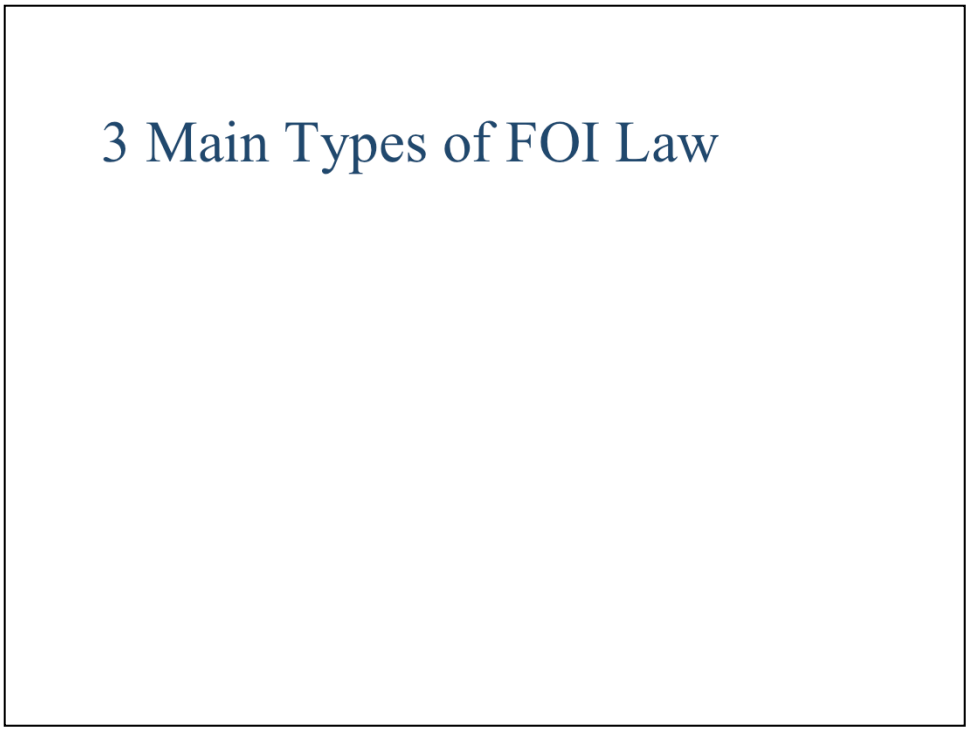
Well, there are lots of records and meetings awaiting your discovery, so let's get started.

Freedom of Information Law

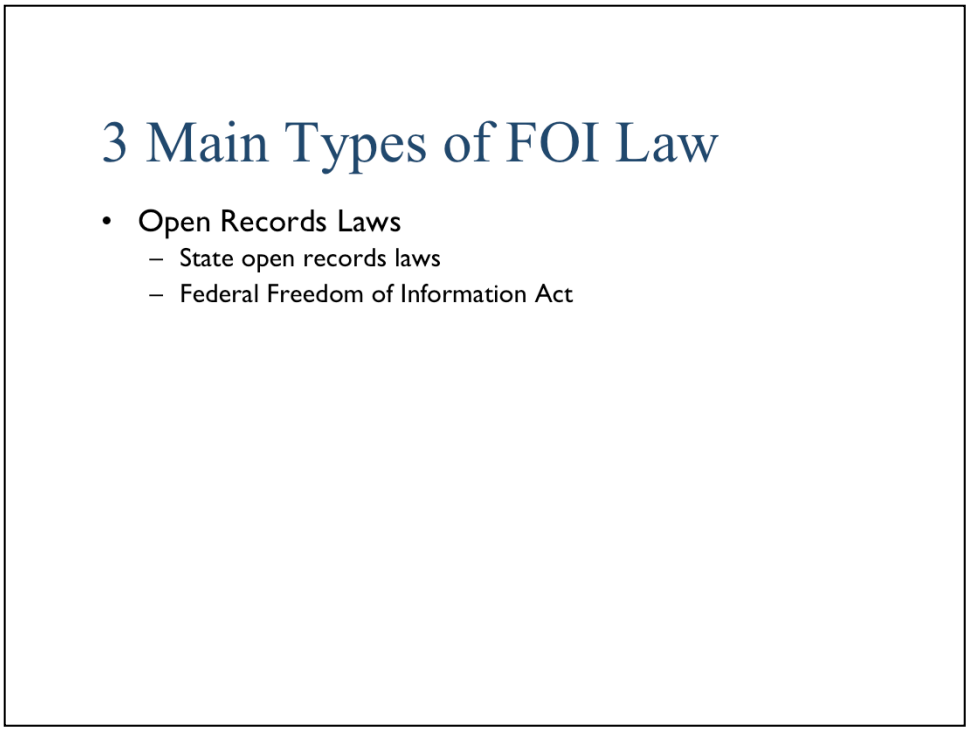
Ensuring your right of
access to public records
and meetings

In America, the government is supposed to belong to the people. Freedom of information laws, also referred to as FOI, open records/open meetings or "sunshine" laws, are simply one means — a tool — by which the citizens/owners have given themselves the ability to keep tabs on — or shed some sunshine on — what their government and its officials are doing.

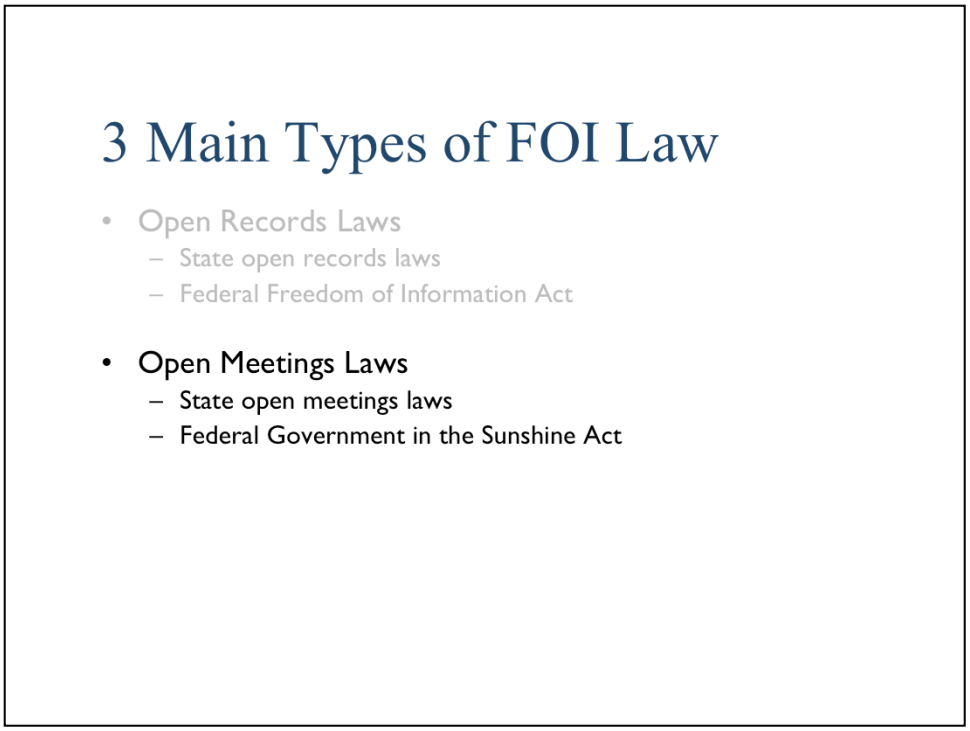
Although these laws are available for use by all, journalists find them especially useful for informing the public. Even so, far too few journalists — both student and non-student — take advantage of the rights these laws provide.



There are three main types of freedom of information law.

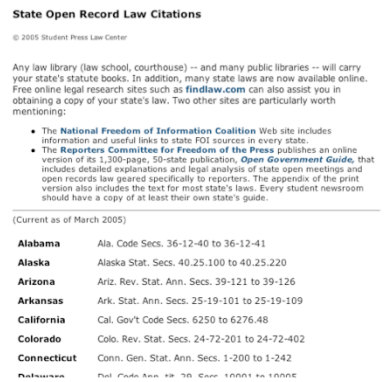


The first are open records laws. Every state, the District of Columbia and Puerto Rico, has its own state open records law. In addition, the federal government has an open records law known as the Freedom of Information Act.



Similarly, all states and the federal government also have an open meetings law. (Sometimes the open meetings and open records provisions are combined together in one law.)

Finding your law



State Open Record Law Citations

© 2005 Student Press Law Center

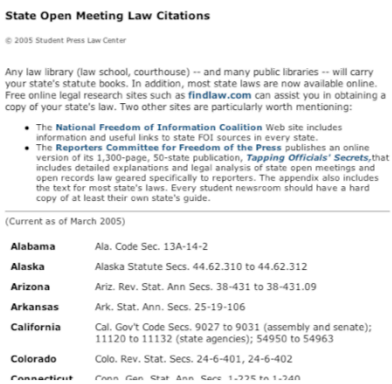
Any law library (law school, courthouse) -- and many public libraries -- will carry your state's statute books. In addition, many state laws are now available online. Free online legal research sites such as **findlaw.com** can also assist you in obtaining a copy of your state's law. Two other sites are particularly worth mentioning:

- The **National Freedom of Information Coalition** Web site includes information and useful links to state FOI sources in every state.
- The **Reporters Committee for Freedom of the Press** publishes an online version of its 1,300-page, 50-state publication, ***Open Government Guide***, that includes detailed explanations and legal analysis of state open meetings and open records law geared specifically to reporters. The appendix of the print version also includes the text for most state's laws. Every student newsroom should have a copy of at least their own state's guide.

(Current as of March 2005)

Alabama	Ala. Code Secs. 36-12-40 to 36-12-41
Alaska	Alaska Stat. Secs. 40.25.100 to 40.25.220
Arizona	Ariz. Rev. Stat. Ann. Secs. 39-121 to 39-126
Arkansas	Ark. Stat. Ann. Secs. 25-19-101 to 25-19-109
California	Cal. Gov't Code Secs. 6250 to 6276.48
Colorado	Colo. Rev. Stat. Secs. 24-72-201 to 24-72-402
Connecticut	Conn. Gen. Stat. Ann. Secs. 1-200 to 1-242
Delaware	Del. Code Ann. tit. 29, Secs. 10001 to 10005

www.splc.org/openrecordlaws



State Open Meeting Law Citations

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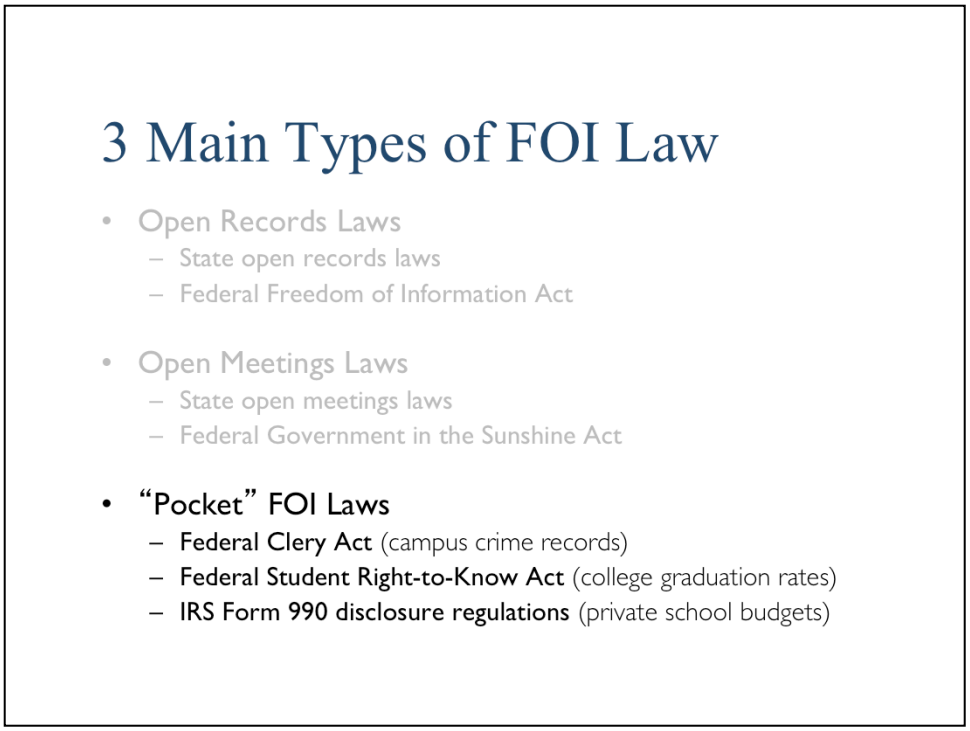
(Current as of March 2005)

Alabama	Ala. Code Sec. 13A-14-2
Alaska	Alaska Statute Secs. 44.62.310 to 44.62.312
Arizona	Ariz. Rev. Stat. Ann Secs. 38-431 to 38-431.09
Arkansas	Ark. Stat. Ann. Secs. 25-19-106
California	Cal. Gov't Code Secs. 9027 to 9031 (assembly and senate); 11120 to 11132 (state agencies); 54950 to 54963
Colorado	Colo. Rev. Stat. Secs. 24-6-401, 24-6-402
Connecticut	Conn. Gen. Stat. Ann. Secs. 1-225 to 1-240

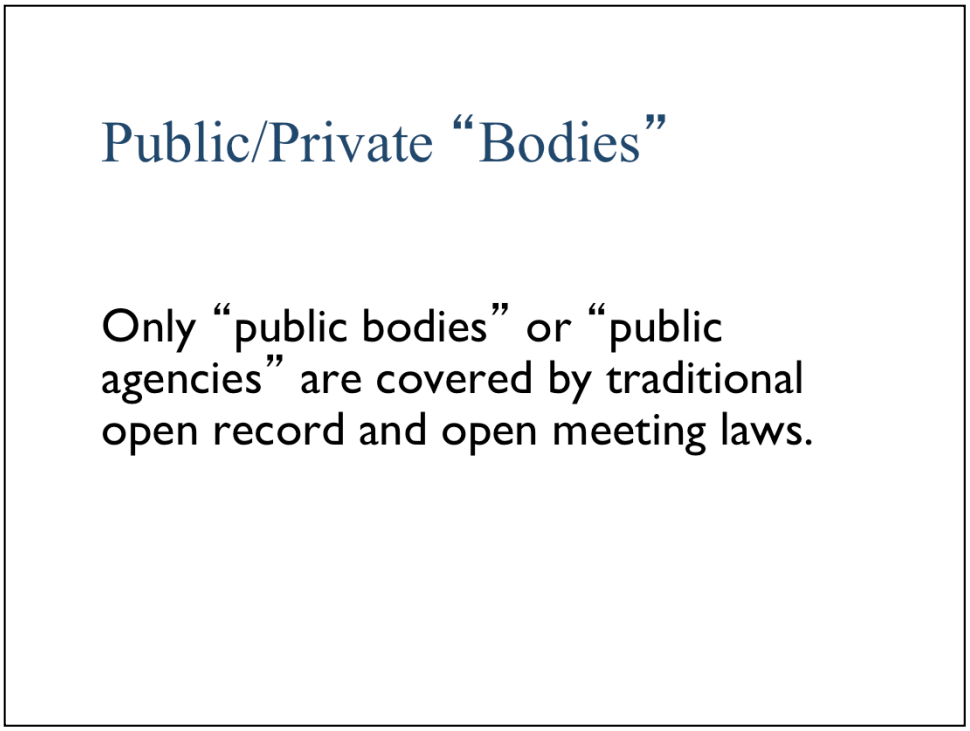
www.splc.org/openmeetinglaws

Finding your law quickly is easy by checking out the SPLC Web site where we have compiled lists of the open record and open meeting laws of every state in the country.

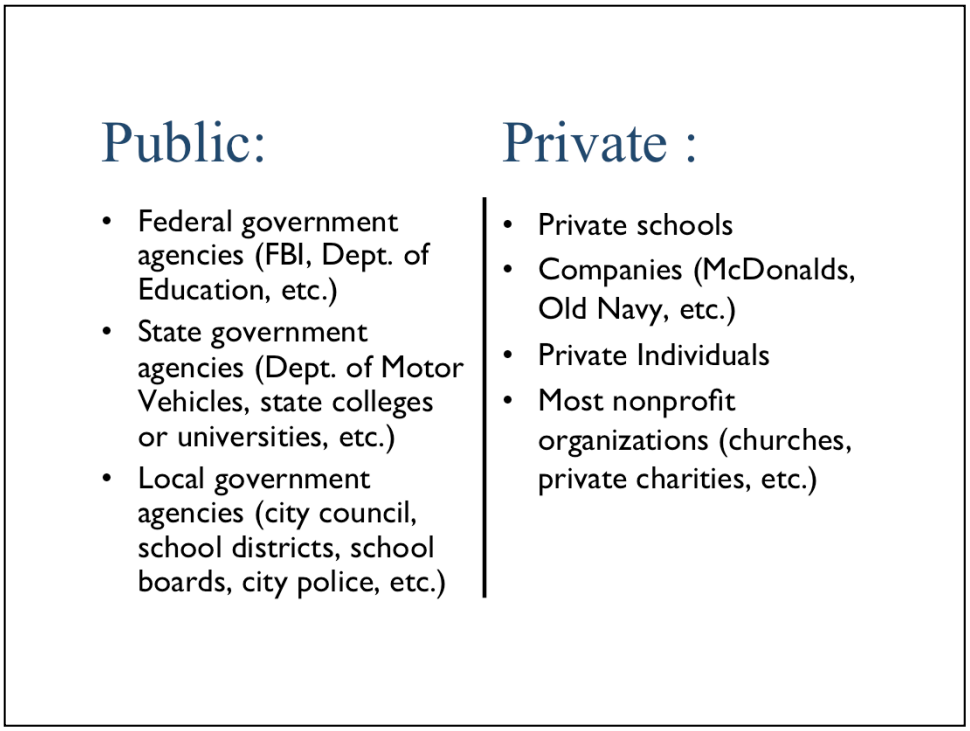


Finally, there are a number of miscellaneous provisions that show up in various state and federal laws that require the public disclosure of information. These "pocket" FOI laws generally focus on making specific types of records available and, in some cases, only apply to a specific body or institution.

For example, at the college level, there are some very helpful provisions tucked within a huge federal education law that require most schools to provide information about campus crime, student graduation rates and their athletic programs. In addition, federal IRS rules require that all nonprofit organizations — which includes most private schools — make available a copy of their annual tax

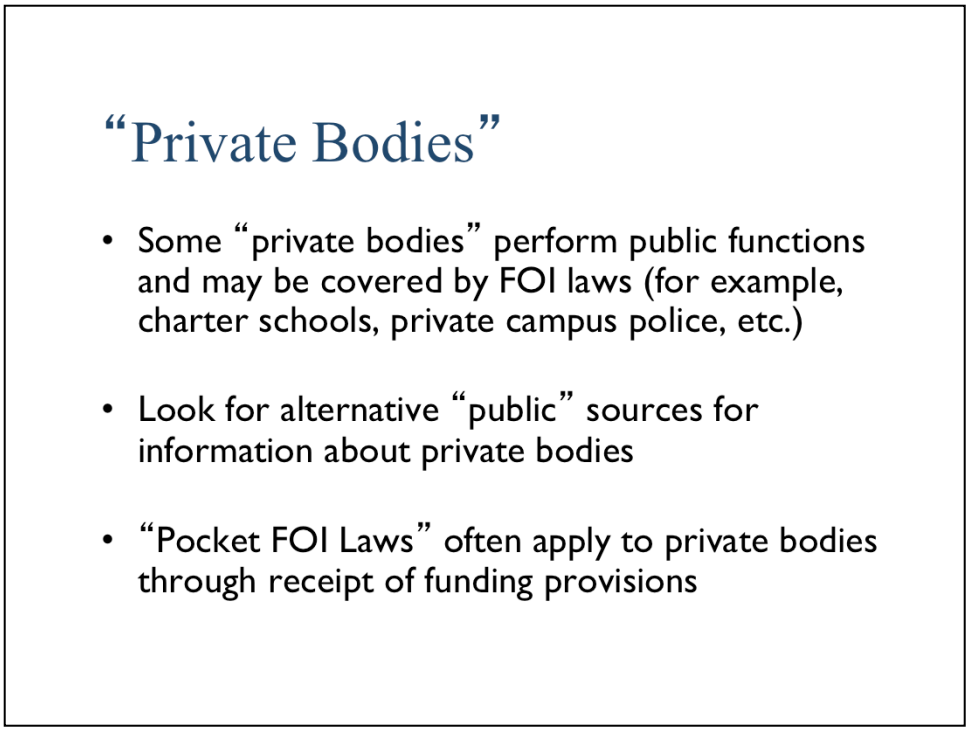


It is important to note that, as a general rule, only "public governmental bodies" or "public agencies" must comply with FOI laws.



While the specific legal definition of a "public body" or "public agency" can vary from state to state, public bodies are usually funded by taxpayers and have some authority to make or enforce rules that the general public must follow.

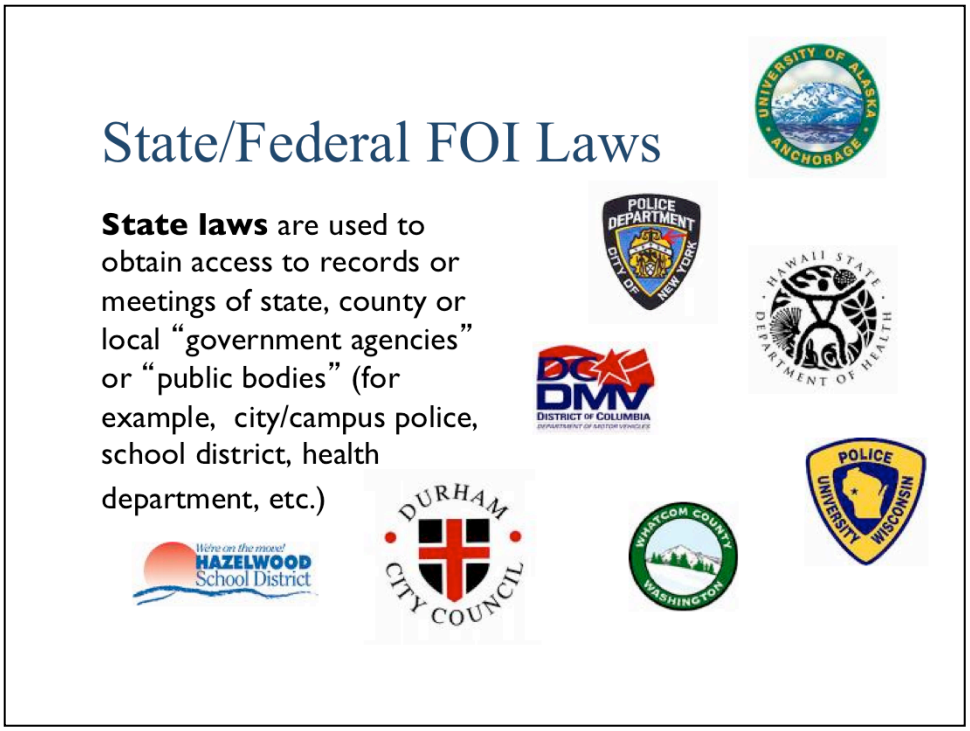
Purely private individuals or organizations, such as a private school or private company, are generally not covered by traditional open record or open meeting laws.



However, if an otherwise private body engages in public business, a court might find that they must also comply with an FOI law. A charter school that contracts with a public school district might be one example.

Keep in mind, also, that almost all private bodies have some interaction with a public agency, so it may be possible to obtain the information you seek through a "back door." For example, while a private school may not have to give you the results of its most recent elevator inspection, your county government's Building and Safety Division (or similar government agency charged with inspecting elevators)— which is a public body — would have to provide the report.

Finally, many of the "pocket" FOI laws apply equally to public and private bodies and are frequently tied to the receipt of government funding or some other government benefit.



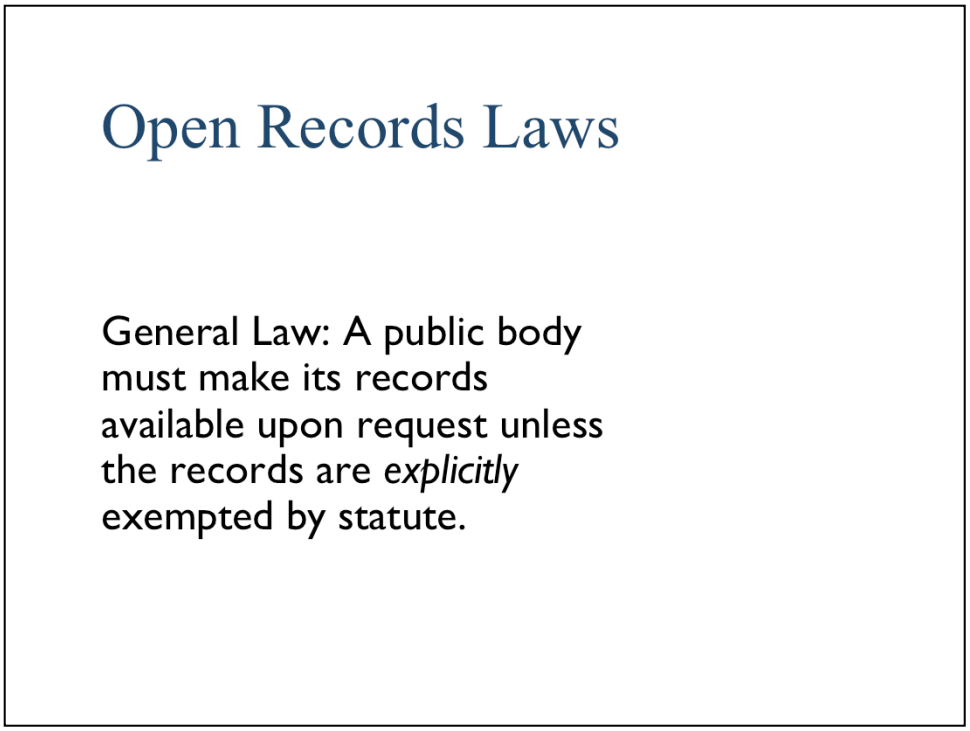
As mentioned, both the federal government and state governments have freedom of information laws on the books.

Generally, if you want to obtain access to the records or meetings of a state, county or city government agency, such as a public school, a local or state police department, a state college or university — or the city dog catcher — you'll look to your state law.

State/Federal FOI Laws

Federal laws are used to obtain access to federal government agency records or meetings (for example, Environmental Protection Agency, FBI, U.S. Dept. of Education, etc.)

If you need records from or would like to attend the meeting of a federal agency, such as the Environmental Protection Agency, the FBI or the U.S. Department of Education, you will use federal law.

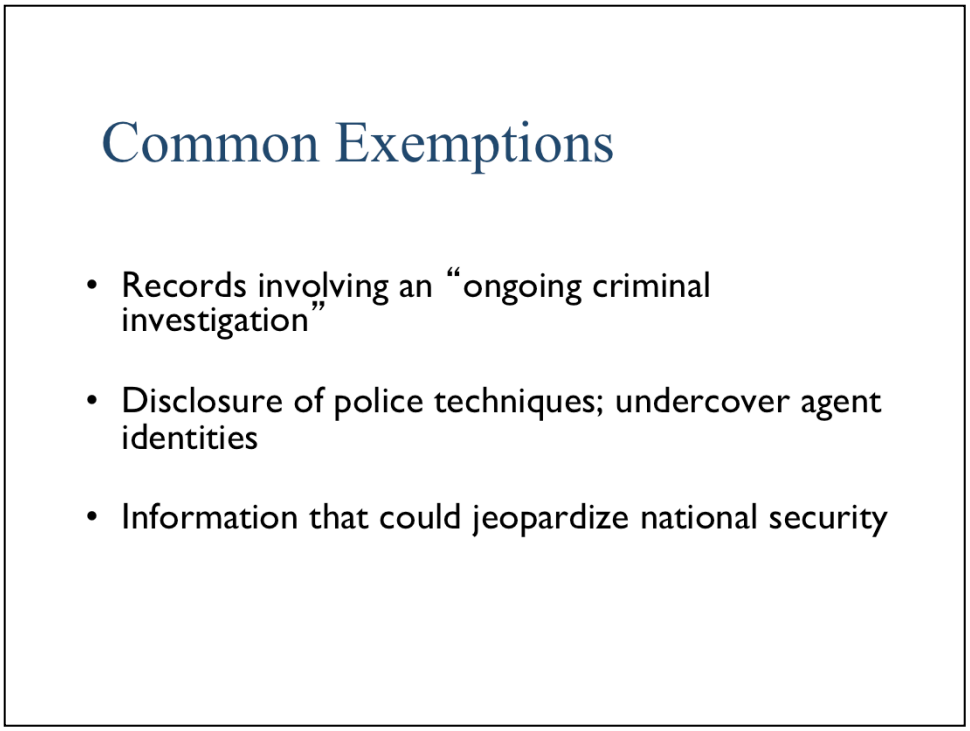


Understanding the basics of FOI law is pretty simple.

Open record laws — both at the state and federal level — say pretty much the same thing: A public body must make its records available upon request unless the records are explicitly exempted by the open records statute.

The law doesn't require that government officials actually create a document that responds to your request if one doesn't already exist.

However, if such a record was produced, open records laws presume the record is publicly available. In other words, *you* don't have to point to the provision that requires disclosure. Rather, the *government* has to point to the exemption that allows it to keep the records closed.



Of course, the exemptions — which vary from law to law and state to state — do complicate things. But they also generally fall into some common categories, most of which conform to common sense.

For example, most laws contain an exemption that either allows or requires law enforcement agencies to withhold records that might interfere with an ongoing investigation or that would disclose sensitive information about how they do their jobs. Exemptions for information that could jeopardize national security are also common.

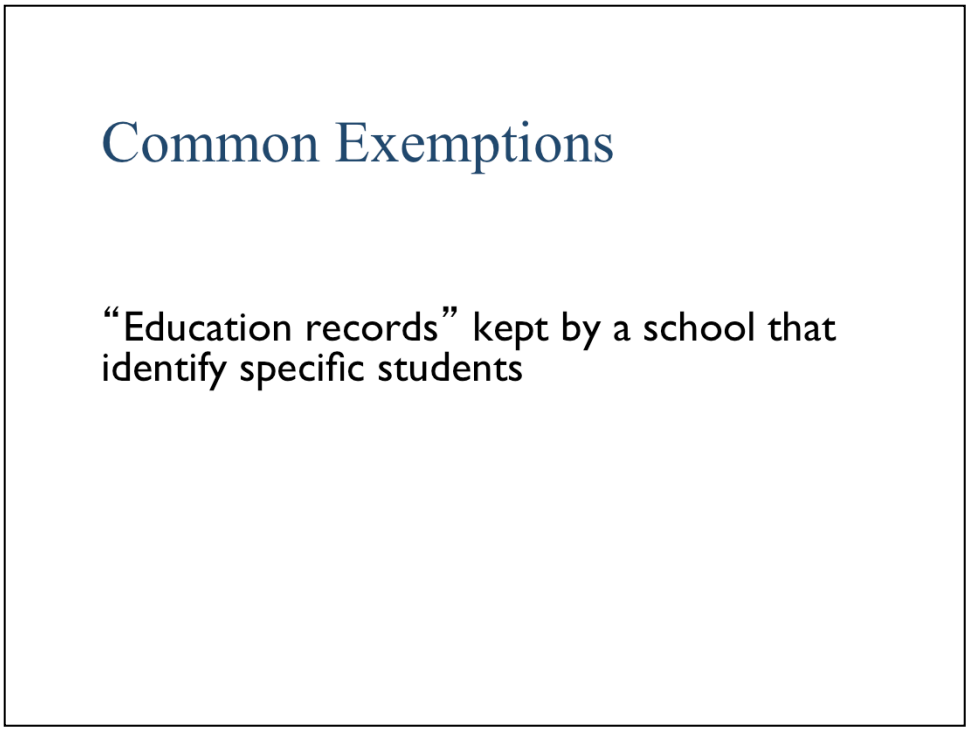
While few would disagree that such exemptions have their place, these are, unfortunately, among the most commonly abused exemptions by government officials who unreasonably rely on them as a catch-all excuse for refusing to release information they simply don't want to disclose.

Common Exemptions

- *Some* personnel records (hiring/firing/disciplinary records)
- Records re: pending real estate deals or ongoing or contemplated legal proceedings
- Documents whose release would constitute an invasion of privacy (medical, adoption, personal financial information)

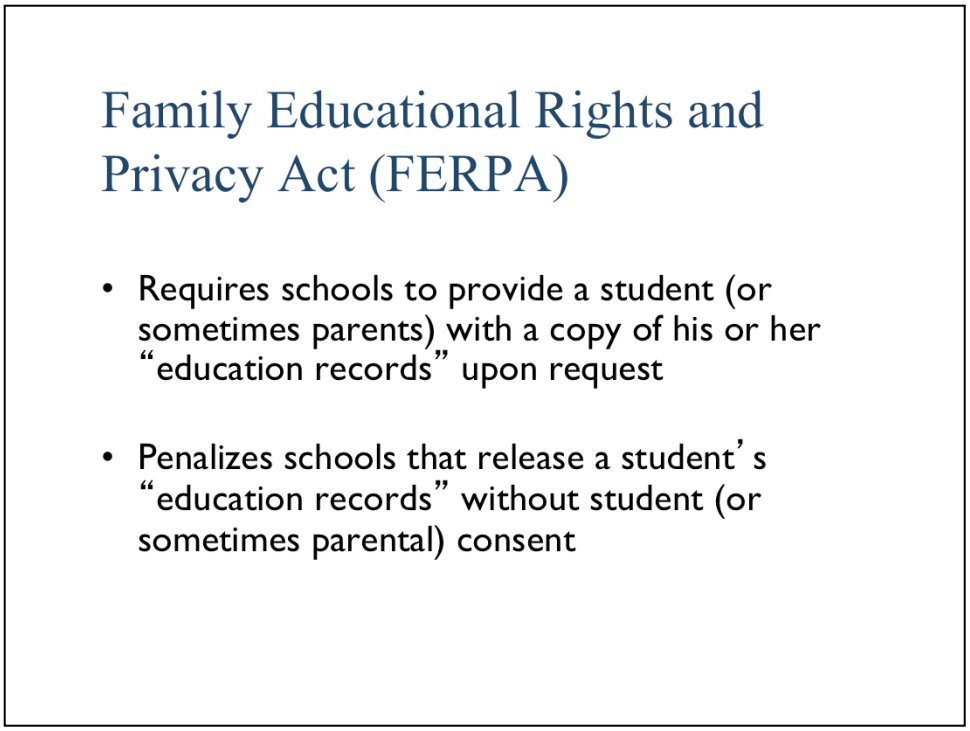
Other common exemptions can include some (but not all) government personnel records, records involving pending real estate deals and documents that are part of lawsuits in which the government agency is involved.

Government agencies can also generally refuse to disclose medical, financial or other documents containing personal information that would constitute an unwarranted invasion of a person's privacy.



Of special interest to student media are exemptions that either allow or require schools to withhold the "education records" of specific, identifiable students.

In the states that have such an exemption, the definition of "education records" can vary widely. But it is important to note that public schools in virtually every jurisdiction must release **some** records to the public.

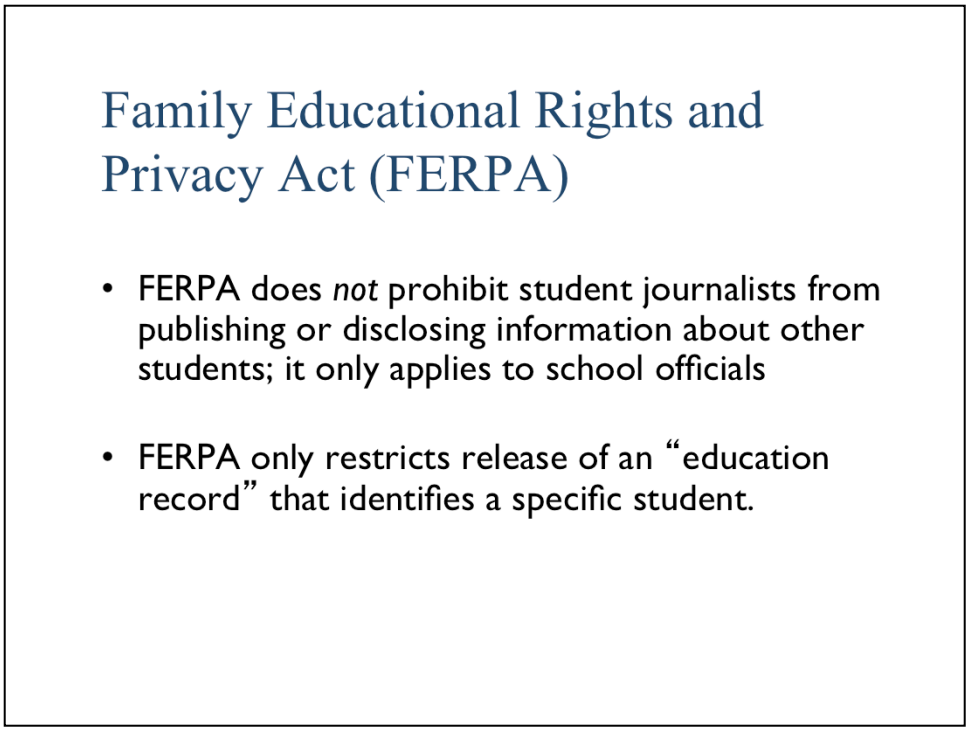


The Family Educational Rights and Privacy Act — usually just called "FERPA," but also sometimes referred to as the "Buckley Amendment" — is a two-part federal law of which student media need to be aware.

The first part is pretty straightforward and useful: it requires schools to provide students — or for minors, their parents — with copies of their own school records upon request.

Unfortunately, the second part of FERPA is more complicated and can sometimes create a significant roadblock for student journalists seeking access to information kept by school officials.

While not technically an exemption to an open records law, FERPA — which applies to any public or private school that receives federal funds — penalizes schools that release student "education records" without student (or sometimes, parental) consent. While the term "education record" seems to have been originally intended by lawmakers to apply to things like student transcripts and standardized test scores, over the years it has been used by school administrators to deny public access to an ever-growing number of non-academic records kept by schools — sometimes with little or no legal justification.



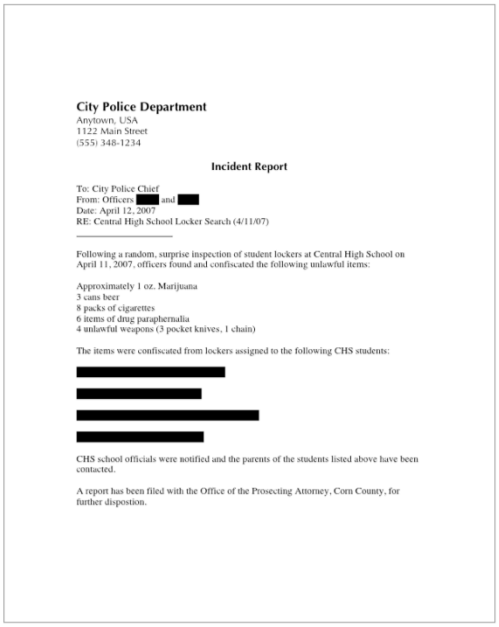
It is important that students challenge unreasonable uses of FERPA by school officials to deny access to information that should be publicly available.

Much more information about FERPA is available on the SPLC Web site, but there are two important limitations to the federal law that all student journalists should keep in mind:

First, the law only imposes restrictions on the disclosure of "education records" *by school officials*. It does not limit the right of students — acting on their own — to publish accurate, newsworthy information about their classmates. There is nothing in the law, for example, that requires schools to obtain written consent forms from parents before allowing their children's names or photos to be included in student-edited print or online publication.

Second, FERPA only restricts the release of records that identify a specific student. It does not, for example, prevent a school from releasing records where names and other identifying information have been blacked out or documents that provide anonymous, statistical information only.

Redaction and Release Often Required



City Police Department
Anytown, USA
1122 Main Street
(555) 348-1234

Incident Report

To: City Police Chief
From: Officers [redacted] and [redacted]
Date: April 12, 2007
RE: Central High School Locker Search (4/11/07)

Following a random, surprise inspection of student lockers at Central High School on April 11, 2007, officers found and confiscated the following unlawful items:

Approximately 1 oz. Marijuana
3 cans beer
8 packs of cigarettes
6 items of drug paraphernalia
4 unlawful weapons (3 pocket knives, 1 chain)

The items were confiscated from lockers assigned to the following CHS students:

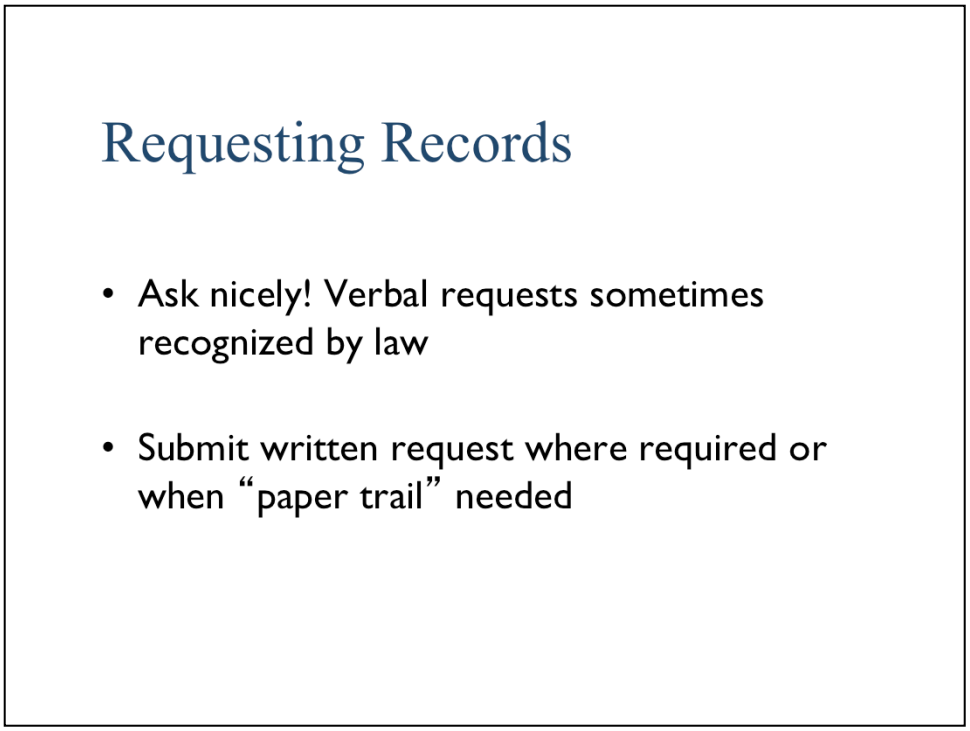
[redacted]

CHS school officials were notified and the parents of the students listed above have been contacted.

A report has been filed with the Office of the Prosecting Attorney, Corn County, for further dispostion.

Even if an exemption does allow a government agency to withhold some information in an otherwise public document, most open records laws contain a redaction provision that requires the agency to redact — or black out — the exempt material and then disclose the rest.

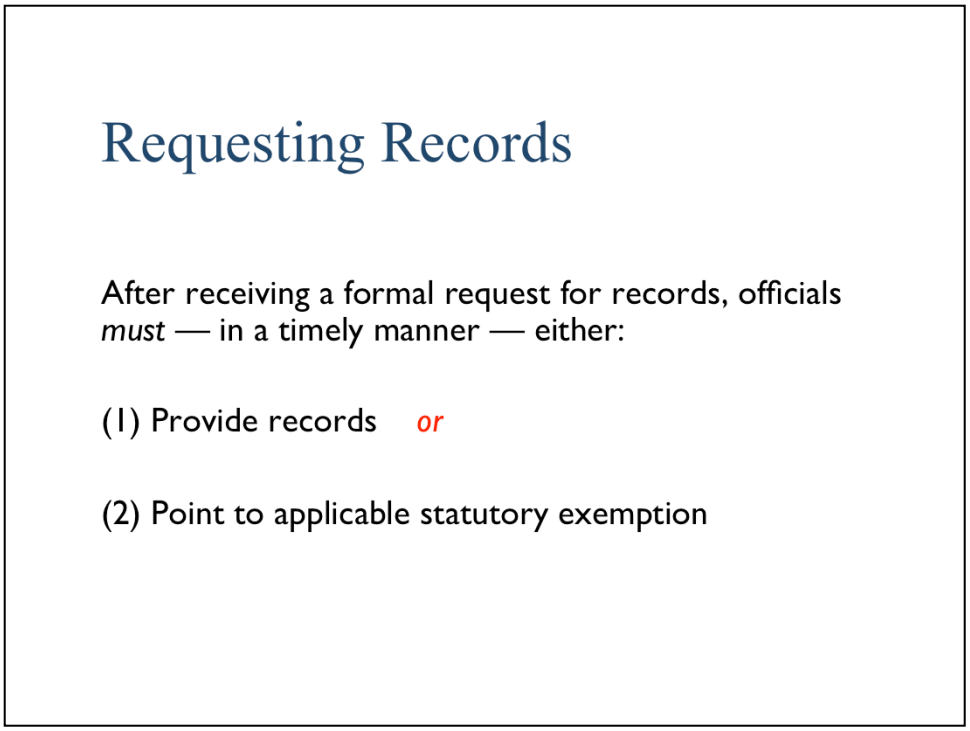
For example, in this police incident report — which provides information about a spot search of student lockers by a local police department — names of students and police officers (who may have been acting undercover) have been redacted. However, other information about the police search, which is not exempt, has been released.



Making a public records request is pretty much a no-brainer.

Simply ask the government official you think keeps the record for a copy. Ask nicely and politely. A friendly verbal request is often all that is required.

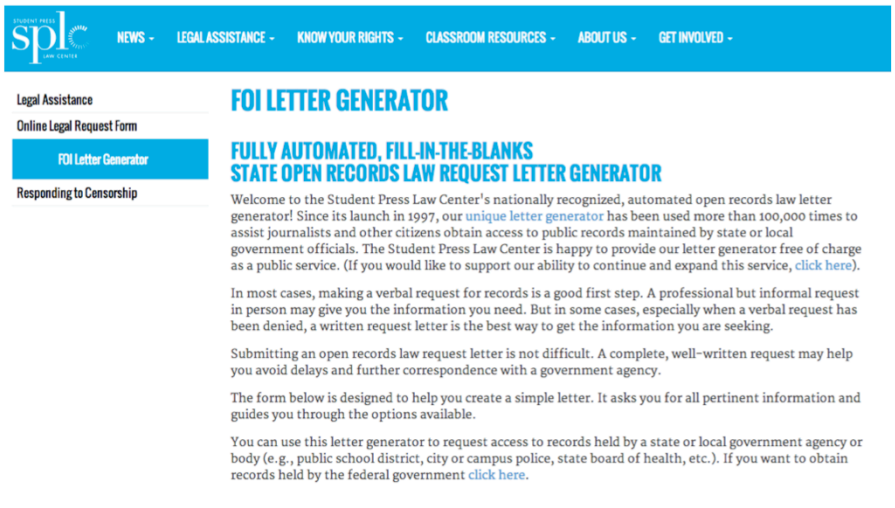
Sometimes the government agency or the law will insist that the request be in writing. A written request might also be required where you know the agency you're dealing with does not want to provide the information. In such cases, your written request will be the start of a paper trail of evidence that you might later have to point to should the agency unlawfully deny your request.



Once you make your request, most open records laws require that the agency official respond within a specified number of days — or at least within a "reasonable" time.

At that time, they generally have just two choices. They must either give you the record you've asked for *or* point out the exemption in the law that they believe allows them to deny your request. Most laws require that any denial be

www.splc.org/foiletter



Filing a *written request* is a simple matter of writing a letter.

The Student Press Law Center's Web site has a one-of-a-kind, automated letter generator for requesting public records that makes creating a letter tailored to your state law as easy as filling out a, short form. To produce a formal records request ready for mailing, all you need to do is have a reasonable description of the record you're looking for (you don't need a specific document number or exact date, but the more precise your description the better) and the name and address of the government official you believe keeps the record you're looking for.

If You Believe Your Request Has Been Improperly Denied

- Contact recordkeeper/cite law politely
- Administrative appeal sometimes available
- Judicial review
- Fines and/or attorney fees may be available

If your request is denied but you still believe that the law requires disclosure, many laws spell out the procedure for challenging the agency's decision.

In almost every case, your best bet is to first contact the person to whom you made the request and ask for clarification. Perhaps they didn't understand your request. Perhaps they've never received a freedom of information request and are unaware of their obligations. Do your best to work things out informally and without resorting to legal threats, but it is usuallly a good idea to be able to cite the relevant open records law. If applicable, ask to speak to the recordkeeper's supervisor or contact that person on your own.

If the informal approach doesn't work, an increasing number of states have established procedures and/or created specific offices where you can file an administrative appeal. It is important to find out whether your state has such an option and take advantage if it does.

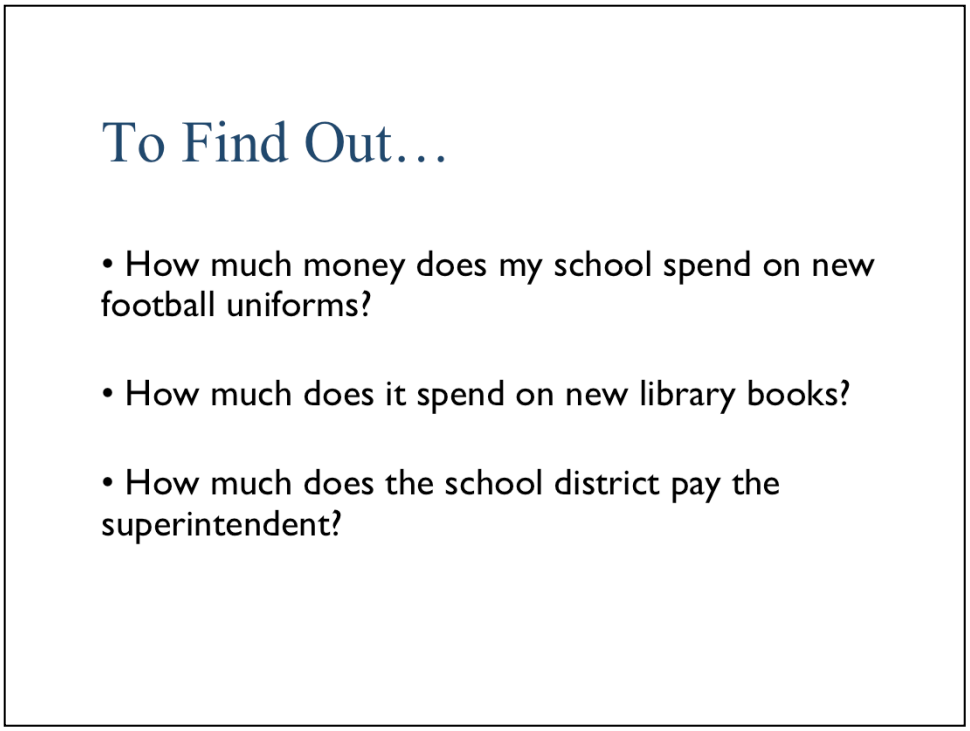
If an administrative appeal is not available — or if you disagree with the administrative ruling — you always have the option of taking the recordkeeper to court. In many states, agencies that improperly deny access to public records can be forced to pay fines and any reasonable fees your lawyer might have charged you to

What Would You Like to Know?

So now you know most of what you need to about how open records laws work.

The next question, of course, is what sort of records can you actually get?

The following examples only scrape the surface of the public records you might want to ask for, but they should put you in the mood to start putting your FOI laws to work.



Would you, for instance, like to know how much money your school spends on its football team? How does that compare to the amount of money spent on womens' s sports programs? Or library books? Perhaps you' d like to know how much money top school officials in your district make? How does that compare to teacher salaries? Or to the salaries of top officials in other school districts?

Ask For:

Your school district's annual budget

To answer these questions — and many, many more — every high school student media newsroom in the country should routinely ask for a copy of the annual budget of the school building or school district. Seeing where money comes from and where it goes to can tell you and your readers more about a school's priorities, strengths and weaknesses than any other single source of information.

A copy of the district's and building's annual budget or financial report should be easy to come by. Copies should be available by contacting your district's central business office. Copies may also be available in your principal's office, local library or, in some cases, even posted online on the school district Web site.

To Find Out…

Are the school buses at my school safe?

If crunching numbers isn't your thing, how about doing a story on the safety of your district's school buses?

Ask For:

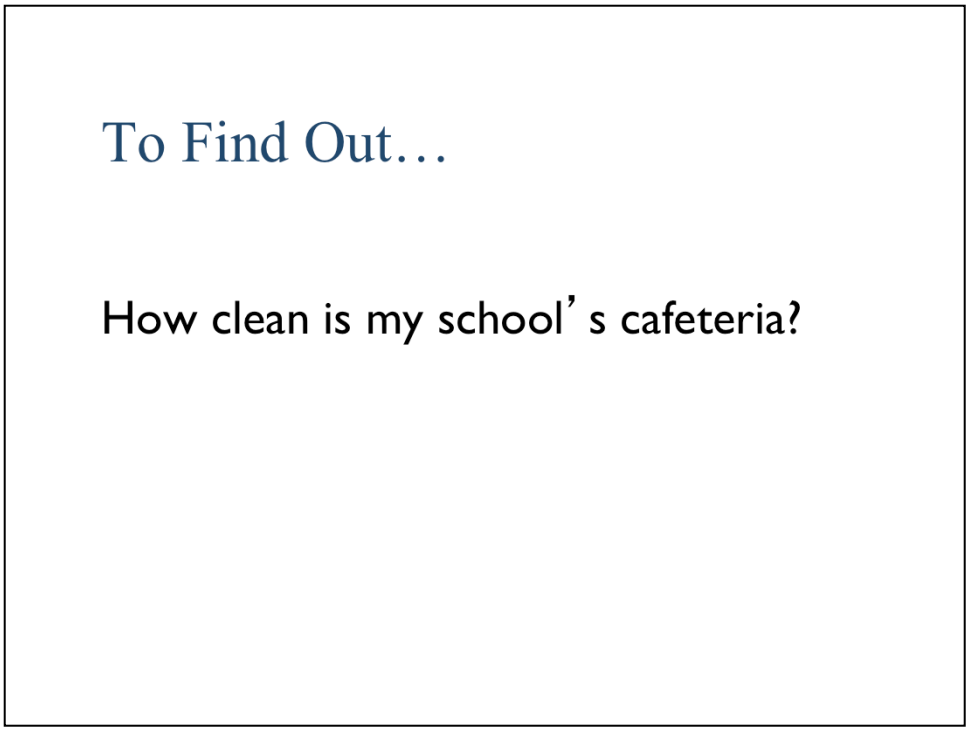
School bus safety inspection reports

School bus inspection records are usually maintained at the county level and should be available at the district transportation office. In some states, such records may also be available at the state level.

School bus safety vehicle inspection programs vary greatly from state to state. Some states have no formal inspection requirements. Others have very specific, thorough guidelines that require regular inspections by certified third-parties.

Most states fall somewhere in between, however, and require that each school bus be inspected about twice a year.

Your state's open records law might also provide access to information about the driving records of school bus operators in your district.



Or perhaps your readers might be interested in knowing what lies behind the kitchen doors of your school cafeteria?

Ask For:

Your school's most recent cafeteria safety/health inspection report conducted by the Department of Health

Cafeteria inspection records detailing health violations and problem areas should be available to the public upon request at your local public health office, which is a government agency. Try looking up "Inspections" under the government pages of your telephone directory. Or call your state health department and ask them where you can find the records you want.

Most states require their school cafeterias and other food facilities such as restaurants to be inspected at least once or twice a year.

Another record in which you might be interested is your school's nutritional program review report. Most schools are required to fill out a report (and in some cases, several reports) that show whether your school is meeting federal and state nutritional requirements.

A copy of this report should be located at your school system's Food and Nutritional Service Department, probably at the district's central office. If you have difficulty locating these records, try contacting your state's education department, which may either have a copy of the completed forms or may be able to direct you as to where to find this information.

To Find Out…

How does my school rank academically compared to other schools?

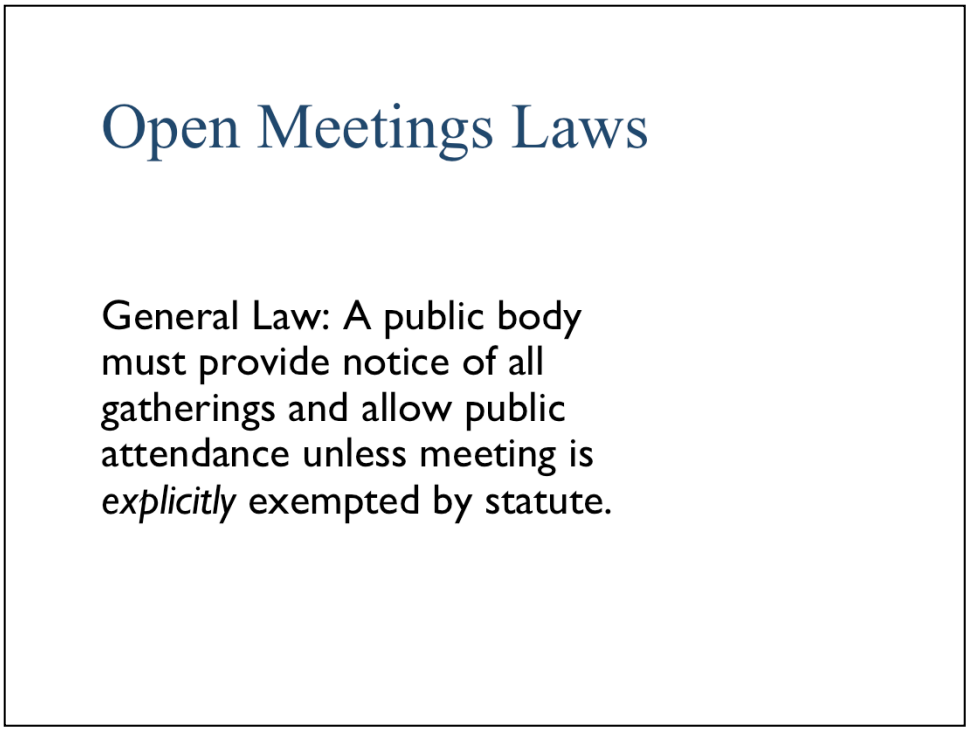
Maybe you'd like to do a story on your school's academic performance and how it ranks compared to other schools in your state or nationally?

Ask For:

Your school's federal "No Child Left Behind" report card

Under the federal No Child Left Behind Act of 2001, every state, district or school that receives federal education funding is required to compile and make available a detailed "report card" that includes a school's and district's standardized test scores, graduation rates and other indicators that show whether or not a school is making adequate yearly progress. All states and almost all schools now make such information available online and it should be fairly easy to track down through either your state Education Department or school district's Web site.

State or local school district reports concerning a school's academic achievements, which in some cases may include more information than required by federal law, may also sometimes be available. Such reports might include SAT test score comparisons, teacher-pupil class ratios, drop out statistics, the number of students in each grade level and some financial data.



So now that we've hopefully sparked some interest in tracking down public records, let's turn to public meetings.

Open meeting laws work pretty much the same way as their open records law cousins: A public body must provide notice of all official gatherings and allow the public to attend unless there is a specific exemption in the law that allows them to keep the doors closed.

Common Exemptions

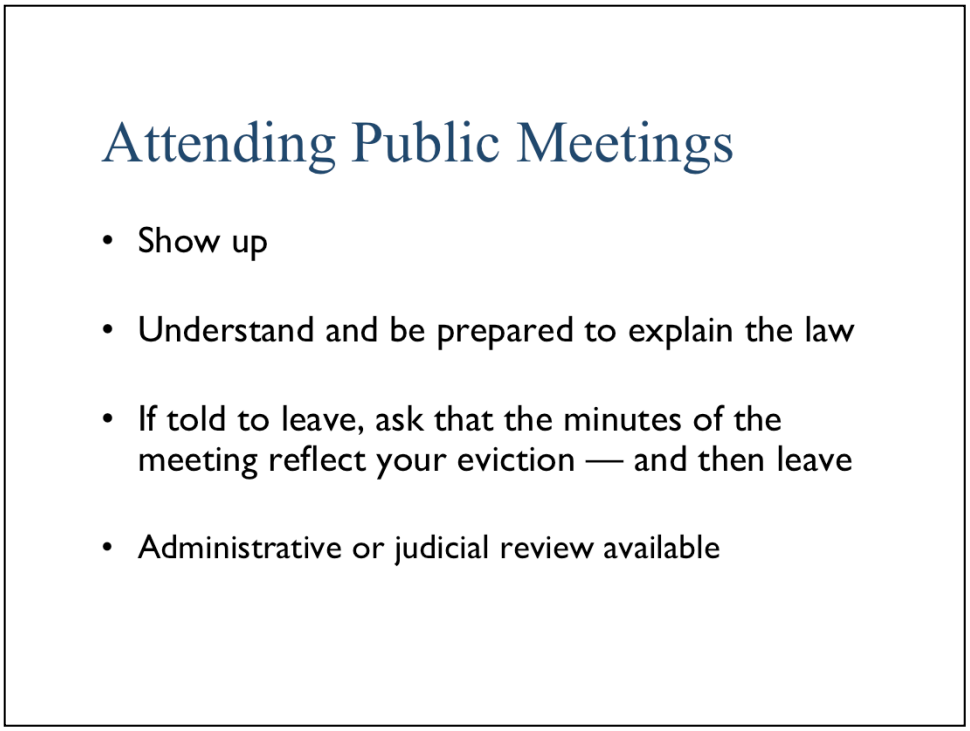
- Discussion of personnel matters
- Discussion of individual students
- Matters involving highly personal information (e.g., medical, personal finance, test scores)
- Discussion of ongoing or contemplated legal proceedings
- Meetings to discuss the acquisition of real estate

Many of the exemptions in open meeting laws also mirror those in open record laws.

For example, public bodies can typically meet behind closed doors (or in "executive session") to discuss the hiring or firing of employees, or talk about disciplinary action or other matters involving individual students.

Exemptions that allow for closed-door meetings to discuss a person's medical or financial issues, legal proceedings and real estate purchases by the public agency are also common.

Again, the exemptions vary from law to law, so you'll have to check the specifics of the open meetings statute you're using.



Taking advantage of an open meeting law is usually even easier than using an open records law: just show up at the meeting you want to attend.

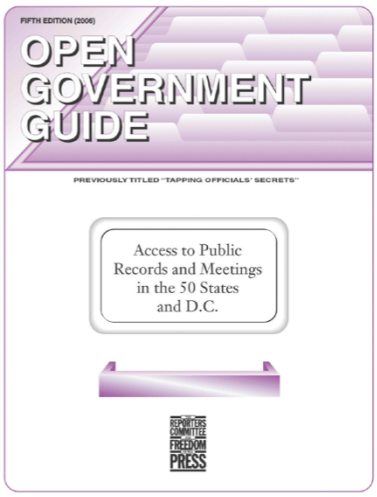
If the agency is not used to having visitors sit in on its meetings, you may want to have a copy of the open meeting law available. Again, courtesy counts. Do your best to keep your discussion friendly.

If officials still tell you the meeting is closed, ask that your objection be recorded in the minutes of the meeting and leave. Immediately write down what happened and whom you spoke with. This is probably a good time to contact a media law attorney or the Student Press Law Center for help.

As with records, most open meeting laws include provisions for appealing agency decisions.

Newsroom
"Must Have"
FOI Law Resource

www.rcfp.org



For detailed information on what records or meetings a particular state's law covers, every newsroom should be aware of the publication, *Open Government Guide*, published by the Reporters Committee for Freedom of the Press.

www.rcfp.org

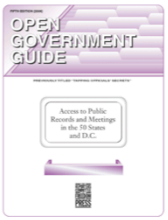
TEXAS

Open Records

IV. RECORD CATEGORIES — OPEN OR CLOSED

K. Police records.

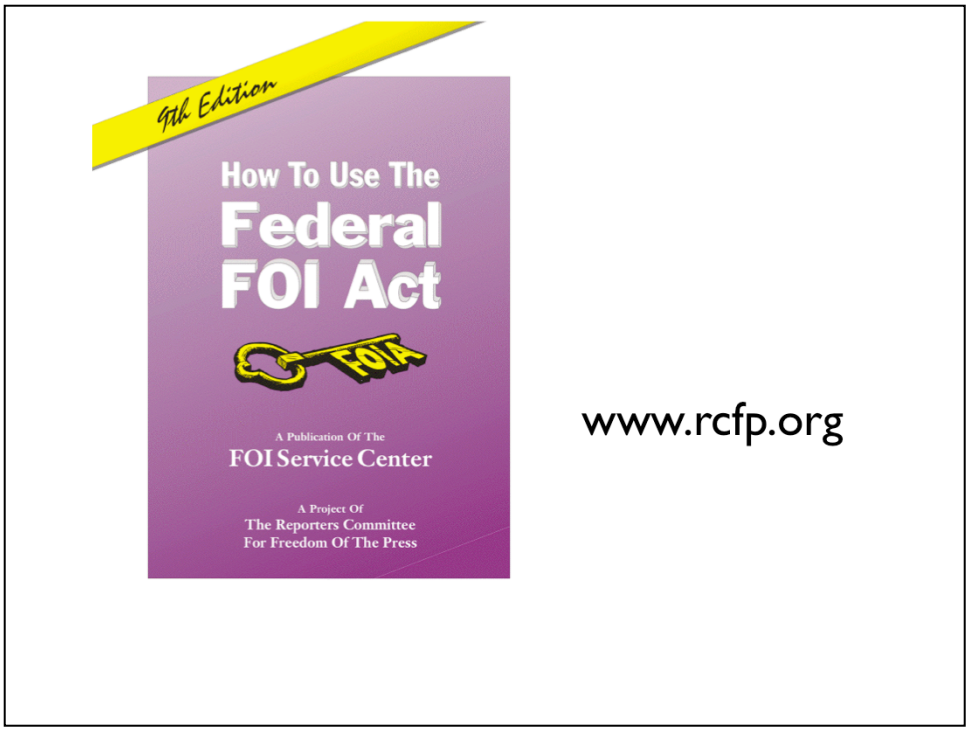
3. **911 tapes**. Tape recordings of calls made to the 911 number constitute public information. Tex. Att'y Gen. ORD-519 (1989). Such records are subject to public disclosure even if they are held by a "911 network district" established under the Emergency Communication District Act. Tex. Health & Safety Code Ann. §§ 772.201-772.300 (formerly Tex. Rev. Civ. Stat. Ann. art. 1432d); Tex. Att'y Gen. ORD-519 (1989).



This wonderful 50-state guide was written specifically for journalists and can provide a quick "yes" or "no" answer to many of your questions about what records or meetings are publicly available in your community.

For example, would you like to know if 911 tapes are available in Texas? The answer, with citations to the state open records law and other legal authority, is just a couple mouse clicks away.

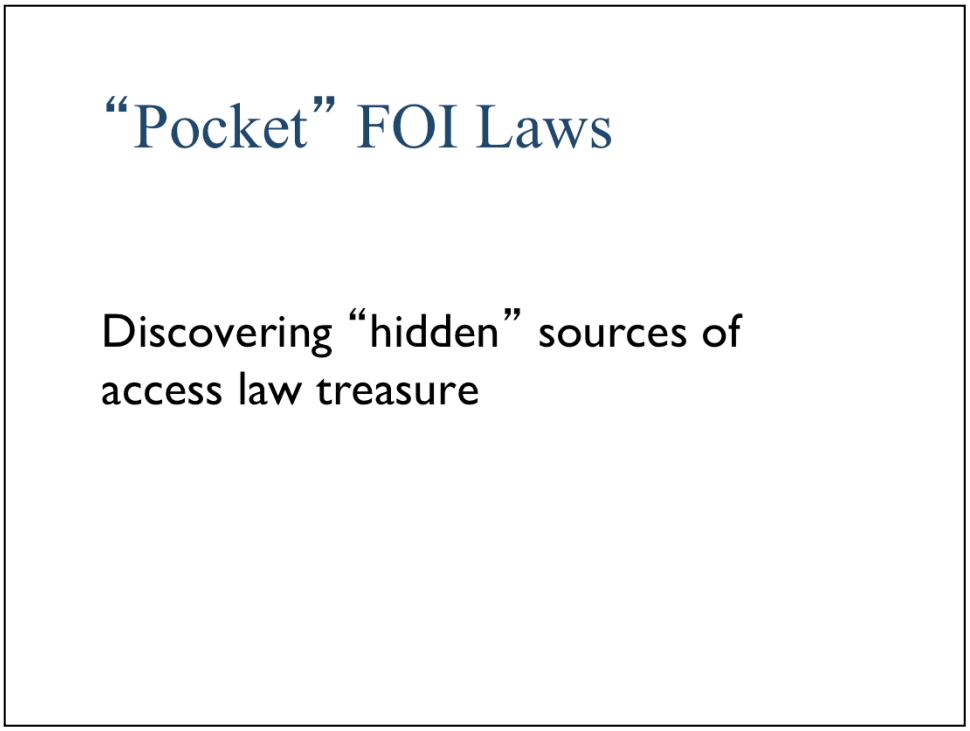
The guide also provides details about your state's legal and logistical requirements for complying with the law and practical suggestions for obtaining access.



A similar guide is available to reporters seeking *federal* government records under the Freedom of Information Act

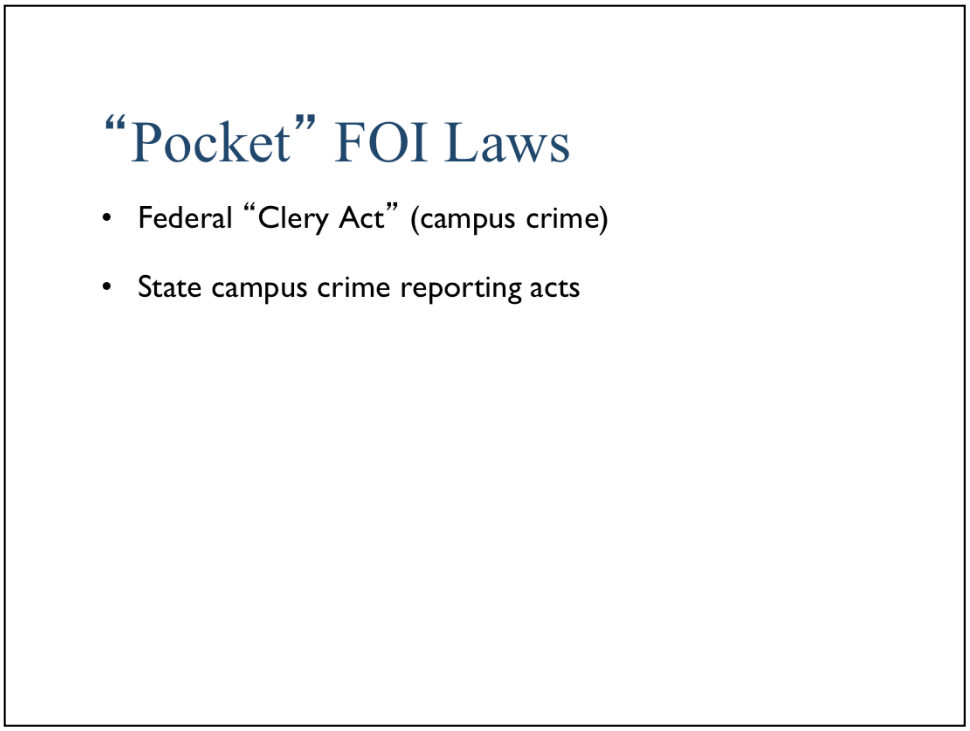
Best of all, both of these guides are available free and online on the Reporters Committee Web site.

Please do take a moment following this presentation to familiarize with the Open Government Guide for your state. It will be well worth your time.



Finally, in addition to the general open record and open meeting statutes, FOI law also includes a number of miscellaneous provisions scattered about and often tucked into much larger pieces of state and federal legislation.

Unfortunately, these "pocket" FOI laws — which sometimes require the disclosure of information by private organizations not covered by a general open record or open meetings law — often go undiscovered except by those who know where to look.



For example, a federal law known as the Clery Act requires all colleges or universities that receive federal funds — which includes all public colleges and nearly all private ones — to provide access to campus crime information. Under the law, college law enforcement officials must compile and make publicly available a daily campus police log that alerts the campus community about criminal activity that may have occurred.

The same law also requires colleges to compile an annual statistical report that tracks the number of certain types of crime that have occurred on or near campus. Such reports are free and available from the individual schools or online at the U.S. Department of Education's Web site.

In addition to the federal law, some states have passed their own campus crime reporting statutes.

Federal reports show Western Tech College is safest in state

Central State Univ. reports 32 percent increase in campus sexual assaults last year; 20 percent jump in thefts

According to reports filed with the U.S. Department of Education last year, Kennedy High School seniors planning to attend some in-state schools next fall may want to invest in a can of mace or a police whistle.

The reports, obtained by the *Student News*, show that campus crime at our state colleges and universities varies significantly from school to school.

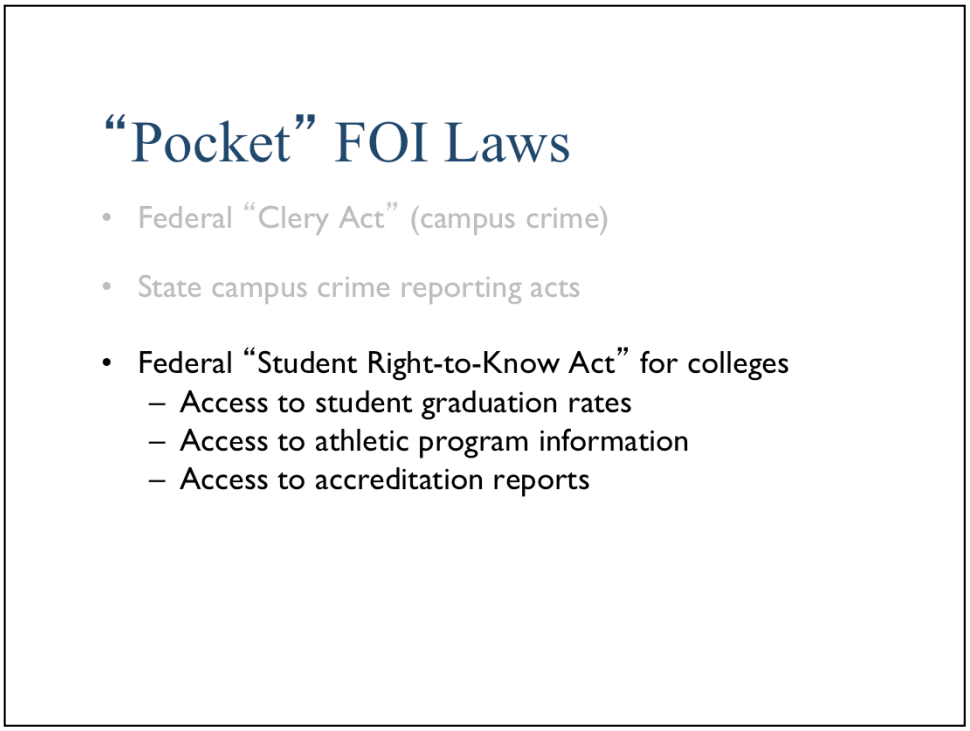
State's "safest" schools:

1. Western Technical College
2. Jessally University
3. Smith Community College
4. Eastern State University
5. St. Mallard College

Source: U.S. Dept. of Education

WTC had lowest crime rate

High school student media can use such reports to compare the safety records of college or universities commonly attended by their school's graduates.



Another set of federal laws, known collectively as "Student Right-to-Know Act," require all public and most private colleges to provide various bits of information about how they operate.

For example, one provision requires schools to report how many of their enrolled students actually graduate. The statistics must be broken down by gender and race.

Another provision requires schools to disclose information about their athletic programs, specifically where money for the program comes from and where it goes. Schools must also provide information about the graduation rates of their student athletes.

A third part of the Student Right-to-Know Act requires that schools make available copies of their institutional accreditation reports, which can point out a school's strengths and weaknesses.

Again, high school media may find such records a source for stories of interest to graduating seniors as they make their future plans.

As mentioned earlier, a state's general open records and open meetings law typically only applies to so-called "public bodies" or "public agencies." This can be frustrating when trying to learn more about a private school or other private organization, such as a charity or nonprofit group or foundation.

Fortunately, federal rules require most private schools and other nonprofit organizations to provide a copy of their federal tax return, known as the IRS Form 990, which can provide at least a peek into the inner-workings of such entities. A school's Form 990 provides general information about where its money comes from and where it goes, including, for example, a list of the five highest paid employees at a private school and their salaries.

This is information you're unlikely to obtain elsewhere.

Unfortunately, a detailed discussion of the various "pocket" FOI laws is beyond the scope of this presentation. Much more information is available on the SPLC Web site.

Final Things to Remember about Freedom of Information Law

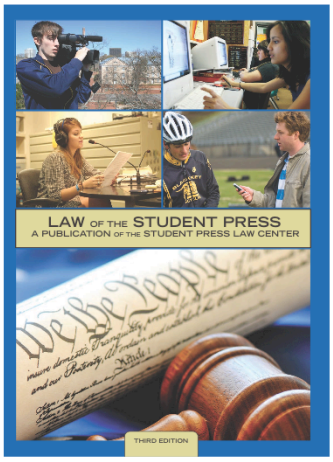
- There is a legal presumption that the records and meetings of a public government body are open and available
- Ask nicely — but be persistent

Remember, using FOI law to obtain information about how your government works is neither rude or nosey. In America, we've decided that we want a government that is ruled by the people, not the other way around.

If that idea is going to work, we — the people — must know what our government and government officials are up to. Freedom of information law is one important means by which that happens.

Other Student Media Law Resources

Student media newsroom
"Must Have" resource

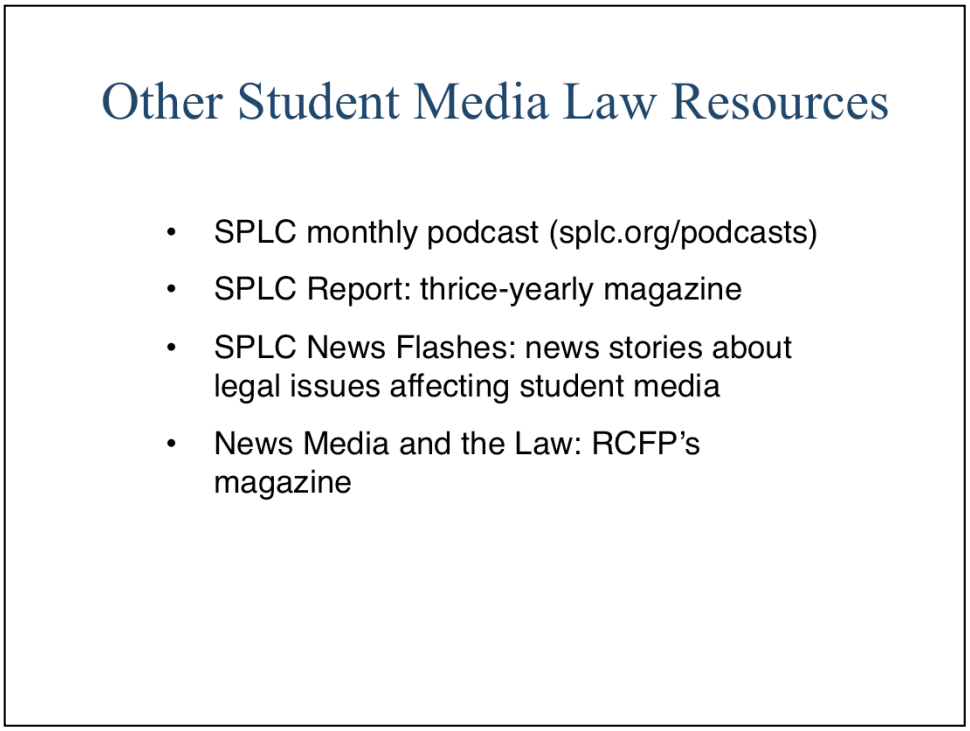


Well, that's it.

Hopefully, you now feel a little more confident — and inspired — about using freedom of information law.

One of the most important resources for additional help is the Student Press Law Center's book, *Law of the Student Press*, which every student newsroom in the country should have on hand. The book includes much more information about FOI law — and many other media law topics. It is the only media law book available geared specifically to student journalists and the unique problems they face.

Purchase information is available on the SPLC Web site.



Other helpful resources — all of which are free and online — include SPLC News Flashes (which can be sent to your e-mail account or read on the Web site), SPLC Podcasts, the SPLC's magazine, the *SPLC Report,* and *News Media and the Law*, a magazine published by the Reporters Committee for Freedom of the Press. All of these can help you stay up to date on the very latest developments affecting America's student and professional news media.

Finally, as noted earlier, the SPLC Web site is packed full of resources and information on student press law issues. Of particular interest is the site's Virtual Lawyer, which is available at any time and ready to conduct a short, online interview to answer your questions and help get you pointed in the right direction.

On behalf of the Student Press Law Center and the Newspaper Association of America Foundation, thank you for taking the time to watch this presentation. We hope you have found it helpful. Enjoy your time as a student journalist — and good luck!

Seek help when you need it!

Student Press Law Center

www.splc.org

(703) 807-1904

Monday - Friday, 9 a.m. to 6 p.m. Eastern Time

Freedom of Information Law for High School Student Journalists was written and produced by the Student Press Law Center with the support of a generous grant from the Newspaper Association of America Foundation.

You can help the Student Press Law Center create new generations of Americans who will understand and defend the First Amendment to the U.S. Constitution and the values it embodies through your tax-deductible contribution. Go to www.splc.org/give for details.

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While every effort is made to ensure the accuracy of the information contained in *Freedom of Information Law for High School Student Journalists* it provides *general guidance and information only*. It is neither intended nor represented as a substitute for obtaining case-specific advice from a licensed and experienced media law attorney in your state.

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