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.
The SPLC is a nonprofit organization, founded nearly 50 years ago, based in Washington, D.C. The Center provides free legal help and information to student journalists and their advisers on a variety of media law issues. We’re going to talk about access to records and meetings today, but the Center is ready to help you answer questions on pretty much any media law issues, including things like copyright law, censorship issues, libel and privacy concerns. More information is available on the SPLC Web site – splc.org — and in various resources produced by the Center.

You can also use their free Hotline Service to submit an email or schedule a telephone call with one of their lawyers.
In America, the government is supposed to belong to the people. Freedom of information laws, also referred to as open records/open meetings laws, are simply one means by which “the people” have given themselves the ability to keep tabs on what their government and its officials are doing.

As journalists, you have so much power to hold accountable members of the government and better yet, those state actors that are even closer to you-- your university administration and other employees. Having a working knowledge of Freedom of Information laws and how to utilize them gives you a major advantage when it comes to your reporting and when it comes to dealing with university administration or police who don’t want to cooperate with your requests for interviews or information.
Who Is Subject to FOI Laws?

- Only **public** agencies or bodies
  - Federal government agencies like FBI, Dept. of Education
  - State government agencies like DMV, state colleges
  - Local government agencies like city council, city police, school districts

Let’s start by talking about who exactly is subject to freedom of information, or FOI, laws. Only public agencies or bodies are covered by these laws. This includes agencies within the executive branch of the federal government, including independent regulatory agencies. On a state level, departments like the DMV or entities like state colleges are subject to open records laws. On a local level, government agencies like the city council, city police, or your local school district must adhere to open records laws.
Importantly, this means that private bodies are NOT governed by open records or open meetings laws. However, some private bodies perform public functions and may be covered by FOI laws. For instance, some police departments at private universities exercise arrest powers and therefore are covered by open records laws, even though they are technically private bodies. There may also be other ways to get information from private entities outside of open records laws. Private schools are required to make available their periodic accreditation reports as a result of Congress requiring that universities that participate in federal financial assistance programs show any current student or prospective student on demand “any documents describing the institution’s accreditation, approval, or licensing.” 20 U.S.C. § 1092(a)(1)(J). In these you can find a ton of statistics.
The typical accreditation report will contain information on how a school is doing in areas like educational support services, administration, financial resources, faculty, physical resources. A good place to start the search for these reports is in the school library. If not there, try asking the university registrar's office. This is just one example of an alternative way to get records of a private body.
Today we’ll talk about three types of FOI law. Open records law is where we will spend most of our time, and there are laws on both the state and federal level that address this. The second type of FOI law is open meetings law, again where we’ll have laws on both the state and federal levels. And lastly we’ll discuss what we call “pocket” FOI laws, which often apply to private bodies through receipt of government funding or some other government benefit.
Let's start with open records laws.

Generally, open records laws say that all records generated are presumed to be public unless they are specifically exempted by law. These are records that are either created or obtained by an agency and are under agency control at the time of the request. Most laws require a public official denying access to these records to furnish in writing a legally justifiable reason for the denial. And if your request is denied, most laws allow the decision to be appealed to an ombudsman or an attorney general or some other higher body.
State Open Records Laws

- Used to obtain access to records of state, county or local “government agencies” or “public bodies” (for example, city/campus police, school district, health department, etc.)
- Verbal request is usually sufficient
- If your verbal request is denied, document the name, title and response of the official you dealt with

As I mentioned, there are open records laws on both the state and federal level. State open records laws are the laws you’ll be using when you are trying to get records from your school, etc. If verbal request is denied, it’s important to document the date, name, title and response of the official you dealt with.
The Reporters’ Committee for Freedom of the Press publishes an online version of its Open Government Guide. This is an excellent starting point if you are trying to find your state’s open records or open meetings laws. The Reporters’ Committee has broken down the law of each state into sections that you’ll be able to click through and find out things like what records are and are not subject to the state law, how to request the records, and any sanctions for noncompliance on the part of the agency.
FOI law at the federal level applies to all records created, possessed, or controlled by a federal government agency or maintained by an entity under government contract. These are agencies like the Department of Education, Department of Transportation, Department of Justice.

FOIA does not apply to Congress, the federal courts, private corporations, or federally funded state agencies. However, documents these bodies create that are then filed with a federal government agency may become subject to the Act.

Agencies frequently require open records requests to be submitted in writing, but you can always try a
verbal request first.
FOI has its limitations

- Agencies aren’t required to
  - Conduct research
  - Create a record that does not already exist
  - Add explanatory materials to any records disclosed
  - Analyze data

Although FOI laws operate under the assumption that records should be made available to the public if the agency possesses them, there are no requirements for agencies to create something that does not already exist. For example, if you are wondering about certain data that the agency does not have compiled in the way you had imagined, the agency is under no obligation to create the record with the information in the format you prefer. Agencies also do not have to conduct further research or add explanatory materials to any records they turn over to you. Again, the purpose of the open records laws is just to give the public access to the information. You have to do the work yourself to decipher what the records may mean, and that could include interviewing members of the agency based on what information you get from your open records request.
Let's talk about the mechanics of actually requesting records.
Requesting Records

- Verbal requests sometimes recognized by law
- Submit written request where required or to establish “paper trail”
  - Reasonably describe the record you are seeking
  - Send to agency or person responsible for keeping the record

Making a public records request is pretty simple. You simply ask the government official you think keeps the record for a copy of the record. Asking professionally and politely will, of course, go a long way.

Sometimes the government agency or the law will insist that the request be in writing. Also, 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. Filing a written request is a simple matter of writing a letter. Doesn’t have to be addressed to the actual individual who has physical possession of the documents, because that’s often a clerk or secretary. It is sufficient to direct your request to the department head, the agency’s FOI coordinator, or another person in a similar position.
The Student Press Law Center's website 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.
So you just plug that information into the blank fields and at the bottom click on the button that says create letter, and the system will produce a PDF version of a letter that you can download.
What Happens Next?

Officials must either:

- Provide the records in a timely manner or
- Point to an exemption

State law will normally prescribe the amount of time allotted for them to get back to you once you've sent in your request. Within that time frame the agency must either provide you the records or respond in writing letting you know that the records are exempt.

If the information can be provided while redacting some information, the agency is required to do so. And, sometimes courts have ruled that information regarding students in these documents can legitimately be redacted while still releasing the information sought. For example, if you’re looking for documents filed with a university notifying the school that it is being sued in relation to a hazing incident, a court may rule that the records can be released with only the student’s names redacted.
If you believe your request has been improperly denied

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

If you believe that your request has been improperly denied, you can always call SPLC and have one of our legal team members look over your request, their response, and the applicable law and guide you on what your next move should be. Generally, if we feel the agency is in the wrong and they should release the records to you, we will advise you to contact the recordkeeper and politely cite the law. If that doesn’t work, the next steps are prescribed by individual state laws. Sometimes there is administrative appeal available, meaning you can appeal the agency decision to a state ombudsman or something of the sort. In some states, the only avenue to dispute their refusal is to take them to court, which has been done by student journalists, but is a lengthy and costly process.

[BYU example of private school police records]
There are other ways besides the strictly legal avenues to put pressure on your school or on an agency to release records. You can always publicize your request and their denial and editorialize on it.
Remember that we said a public body must make its records open for public inspection unless it can point to a statutory exemption. I want to discuss some of the more common categories of information that are claimed as exempt under the freedom of information laws. It’s important to know the that while many of the exemptions you’ll find are quite legitimate, there are some that should raise a red flag when they are cited.
Common Exemptions

- Records involving “ongoing criminal investigation”
- Information that would jeopardize national security
- Police techniques
- Some personnel records like hiring, firing, disciplinary
- Education records kept by a school

This slide lists a few of the most common exemptions that you’ll see cited when requesting records. Anytime you’re requesting records that may interfere with police procedures involving ongoing criminal investigations or otherwise jeopardize police strategy, you will likely not get access. This is because there’s always a balance between the public’s legitimate right to know what government actors are doing and the legitimate interest in not interfering with safety-keeping missions of law enforcement officers.

Another common exemption you’ll hear is exemptions for personnel records that talk about hiring, firing, or disciplining. These records are often protected by other federal privacy laws.

Lastly, you’ll hear a lot of talk about education records, which leads to a source of great consternation for most of us in the journalism world.
“Education Records”

- Includes most information that is directly related to a student and is maintained by the school
- Common examples: grades, disciplinary records, special education records

Records must meet two criteria to be considered education records. First, the records must include information that is directly related to a student. The most obvious example would be your individual grades in the classes you are taking. Second, the records must be maintained by the school.
That brings us to FERPA. For those of you who aren’t familiar, FERPA is the Family Educational Rights and Privacy Act. This law is probably the most commonly cited exception that we get questions about at the SPLC. And 99% of the time, the institution is misapplying the statute.

The Department of Education has repeatedly described this statute as a NARROW one that protects only the confidentiality of students’ education records. The law was enacted in order to give students rights with regards to their grades and other information and to keep them from being disclosed without your permission. One part of the law penalizes schools that release these education records without student or parental consent. The other part of the law requires schools to provide students or their parents with a copy of their education records if requested to ensure that everything is accurate.

This should have been fairly straightforward. But time and time again, schools have used it to hide information they don’t want to
get out to the public.
Family Educational Rights and Privacy Act (FERPA)

- FERPA does not prohibit student journalists from publishing or disclosing information about other students; it only applies to school officials.
- FERPA only restricts release of an “education record” that identifies a specific student.

Schools (either purposely or ignorantly) have come to misunderstand FERPA as preventing them from providing the public even with an anonymized factual description of disciplinary events or safety problems involving students. As a result, parents and members of the media and community are often told that the school cannot describe any “bad” incident that has happened at the school or divulge whether anyone was punished. This is not true.

FERPA does not protect disclosure of general information that just so happens to relate to students. Therefore, it does not apply to disclosure of information derived from a source other than education records. In other words, as long as the school itself is not being asked to provide the contents of a school-maintained record, FERPA does not prohibit release of the information. And the student media does not count as the school itself.

So, for example, while you may not be able to get access to a student’s disciplinary record, as a reporter you still have the legal right to interview witnesses of incidents, even if the incidents may
be described in some record somewhere.

If you get denied, try to find examples of analogous information that has been released by other schools.
Commonly Requested Records

- Disciplinary records
- Records of sexual assault and campus crime
- Reports of employee misconduct
- Settlement and litigation documents
- Title IX records

Here are some commonly requested records that you will run into issues obtaining.

Disciplinary records are usually considered exempt under FERPA and cannot be disclosed, although courts have varied in their rulings. However, certain disciplinary outcomes are not covered by FERPA, and this is important to know. The final results of a disciplinary proceeding involving a crime of violence or a non-forcible sex offense may be disclosed without violating FERPA. The school would have to reveal the outcome of the proceeding, the name of the student who committed the offense, and the violation committed.

Sexual assault records are another doozy. In 2017, University of North Carolina at Chapel Hill refused to release records of people found responsible of sexual misconduct by the university, claiming that even though the documents were FERPA exempt, the university retained discretion over whether to release the documents. The North Carolina Court of Appeals ruled that a
university does not have discretion on whether to release information otherwise subject to open records laws.

Legal documents-- cannot be withheld just because a student is involved in the case in some way. So, for instance, a school can’t refuse to tell you how much a case settled for simply because a student may have been the victim or a witness.

Employee misconduct-- a clear majority of courts have ruled that documents discussing employee misconduct aren’t covered by FERPA even if students were the complainants or victims.

Title IX records are notoriously hard to get. This information can be withheld based not only on FERPA, but a myriad of other privacy laws as well. Depending on the state, a completed disciplinary proceeding against an employee is often considered public information, but an incomplete or on-going investigation is considered private. But many state disclosure laws also include a general privacy provision that allows an agency to disclose even private records if the public benefit of disclosing the information outweighs the harm to a person’s privacy. So cases finding evidence of sexual harassment or assault by an employee are generally considered newsworthy.

You can also confirm the existence of an official investigation through the Department of Education, which maintains an online database of pending cases. You can find those under the Sex Discrimination tab.
What would you like to know?

Let’s do a few real world examples of things you may be curious about reporting on in your campus publication.
If you’re wondering...

- How much money does my school spend on new football uniforms as compared to new textbooks?
- How much does the school district’s superintendent get paid per year?
Ask for:

- Your school district’s annual budget
  - Copies should be available at central administration office

The annual budget report should list the salaries of most school employees, and would show you things like if the school paid for your principal’s trip to Hawaii. The budget is also good for comparison on things like how much was spent last year on new books for the library versus new equipment for the football team.

These budgets are issued annually and open to the public. Copies should be available at school district’s central administration office, but you can also look on the district website or at the public library.

This information is available for public school students. Those of you at private schools can still ask, but school officials are likely not legally required to provide information on how your tuition money is being spent. This is where an IRS Form 990 can come in handy, which I will discuss later.
If you want to know...

- If the school buses at your school are safe
School bus safety vehicle inspection programs vary greatly from state to state. Some states don’t have formal inspection requirements, but most will have at least something requiring school buses be inspected once or twice a year.

School bus inspection records are usually maintained at the county level and should be available at the district transportation office. Because these records are so voluminous, and they are allowed to charge you for the cost of photocopying, may be easier and cheaper to set up a time to personally inspect the records.
If you’re wondering ...

How clean is my school cafeteria?

Let's say you see some mouse traps near the food service line in the cafeteria. It sparks your interest and you want to know whether there have been any health violations at your school. Is your school meeting sanitation requirements?
Ask for:

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

Most food facility inspections are conducted at the local level by county or city health inspection officials rather than by the state health department, but you can also call your state health department and ask them where you can find the records you want. Most schools require their cafeterias and other food facilities to be inspected at least once or twice a year.

You may also be interested in your school’s nutritional program review report. Most schools are required to fill out a report that shows whether the school is meeting federal and state nutritional requirements. A copy of the report should be located at your district’s Food and Nutrition Service Department (probably at your district’s central office).
Accreditation reports -- a copy should be available at district’s central office or on the website. Most American public schools are accredited by one of six regional accrediting associations across the country. These entities are private nonprofits, but once the reports are sent to your school, should be public information.

Private schools are also required to make available their periodic accreditation reports as a result of Congress requiring that universities that participate in federal financial assistance programs show any current student or prospective student on demand “any documents describing the institution’s accreditation, approval, or licensing.” 20 U.S.C. § 1092(a)(1)(J). In these you can find a ton of statistics.

The typical accreditation report will contain information on how a school is doing in areas like educational support services, administration, financial resources, faculty, physical resources. A good place to start the search for these reports is in the school
library. If not there, try asking the university registrar’s office. This is just one example of an alternative way to get records of a private body.

Academic performance reports-- Every Student Succeeds Act, which replaced No Child Left Behind requires every district publish report cards (which are public information) that must include, among other things, test score results, high school graduation rates, school funding information, teacher qualifications. Should be able to find this via your state education department or school district website.
Open Meetings Laws

General Law: A public body must provide notice of all gatherings and allow public attendance unless meeting is explicitly exempted by statute.

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 the time, place and agenda 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. Generally, a quorum of members must exist.

Chance social or informal gatherings of agency officials are generally not covered.
Attending public meetings

- Show up
- Understand and be prepared to explain the law
- If told to leave, ask that the minutes of the meeting reflect your eviction

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. Different state statutes may provide for administrative or judicial review.

This is probably a good time to contact a media law attorney or the Student Press Law Center for help.
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

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

Non-governmental entities like university foundations may fall under the open meetings laws when they are created by a government body, use public facilities, supported in whole or in part by public funds, or perform traditionally governmental functions.

Student government meetings are often not referred to in the statutes, but at a public school where they are responsible for allocating student activity fees or other public money, or where decision-making authority has been delegated to them by the school, the open meetings law will often cover them.
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.
Federal Clery Act (Campus Crime)

- Applies to all public and private institutions receiving federal financial assistance
  - Annual campus security report
  - Daily campus police log
  - Timely alerts

- Noncompliance can result in a fine of up to $54,000 for each violation and potential loss of eligibility for federal aid

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.

Clery Act requires colleges to gather:

- An annual campus security report (including statistics for the past 3 years on crimes like murder, sex offenses, robbery, assault, and certain hate crimes) that is either mailed or posted online or included in student handbooks

- A daily campus police/security log (logs for the most recent 60 days must be physically available on request for inspection during normal business hours of the police or security department. Logs older than 60 days must be made available within two days of request), and

- Timely reports (disseminating information about ongoing threats to students)

The Department of Education monitors this. If you feel your school isn’t accurately providing the required information, can file a written
complaint with Regional Office of the Department of Education. No administrative appeal or court appeal is provided under Clery Act, but may exist under state open records laws.

Some state campus crime reporting acts require more detailed or different information than federal law.
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. Colleges must submit a report to the Secretary of Education including things like academic standards adopted by a school, student graduation rates, cost of attending school, availability of financial aid and methods of award and disbursal.

Schools must also submit to the Secretary of Education the number of students receiving athletically related aid, graduation rates of these students, etc. Report must be provided by July 1 of each year. Can get this from Department of Education as well.

Schools also must compile annual report detailing revenues and expenditures that can be contributed to athletic programs. All you should have to do is go to school’s business office or athletic department and ask for a copy.
Fortunately, federal rules require most 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 going to be particularly important for those of you at PRIVATE SCHOOLS. You can get access to a school’s IRS Form 990 report if school is nonprofit, as most private schools are.

This will provide information about a school’s finances -- including executive salaries, amount of money organization has taken in each year (including grants), a list of where the money was spent, information on the sale or purchase of investments like stocks and bond, and more.

Can get copy from the IRS by contacting the IRS service center
that serves your state, but this can take up to three months. So, contact the school’s business office to request access to a copy. Must be made available to anyone who asks to see it during school’s normal hours. Or you can go to www.guidestar.org

Official complaints can be sent to district director of the IRS district office in which the organization is located.
Remember, using FOI law to obtain information about how your government works is neither rude or nosy. 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.

That’s it! Hopefully this helps you feel more equipped to go search for the records and information that are going to help you do reporting with impact. Don’t be scared off. And just another reminder to contact us at splc.org/legalhelp to schedule a call or send an email to our legal team if there are specific issues you are faced with.

Of course, we haven’t covered everything and you may have more questions.
As noted earlier, the SPLC Web site is packed full of resources and on student press law issues and you can talk one-on-one with their lawyers using their free legal hotline. On behalf of the Student Press Law Center, thank you. We hope you have found this presentation helpful.
Press Freedom for High School Student Journalists was originally written and produced by the Student Press Law Center in 2006 thanks to a grant from the Newspaper Association of America Foundation (now the News Media Alliance.) The presentation has been updated several times over the years.

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While every effort is made to ensure the accuracy of the information contained in Press Law Primer 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.

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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