

U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

December 5, 2014

MR. BRAD HEATH
USA TODAY
7950 JONES BR
MCLEAN

Dear Mr. Heath:

This response

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pursuant

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**PUSHING
BACK**

The records responsive to your request are exempt from release under FOIA exemption (b)(7)(E). In these responsive records could reasonably be expected to interfere with enforcement proceedings. For a further explanation of this exemption, see the Department of Exemptions.

In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E)/ Privacy Act exemption (j)(2) [5 U.S.C. § 552/552a (b)(7)(E)/(j)(2)], this response neither confirms nor denies the existence of your subject's name on any watch lists.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

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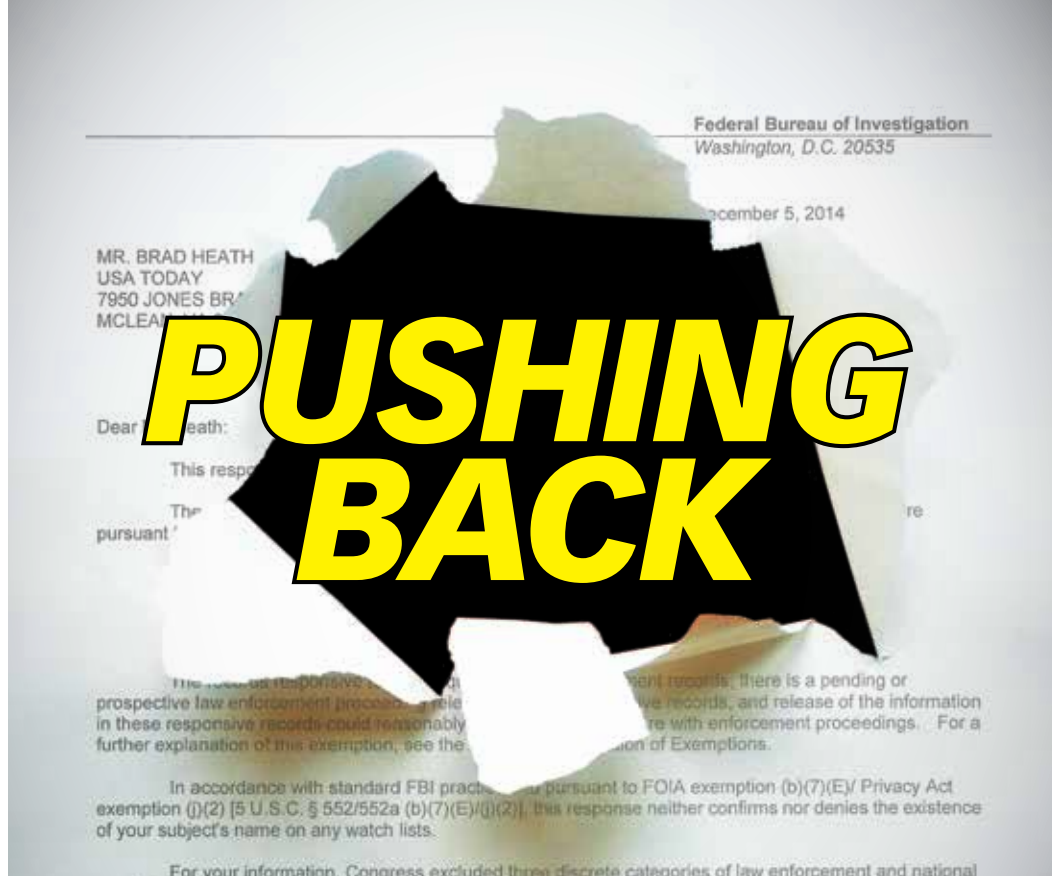
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Fight for the story

BY MARK HORVIT

‘No.’ Journalists hear that word way too often from government officials. Whether it's a request for documents, an attempt to set up an interview with the expert on staff instead of the official spokesperson, or a quick question meant to do nothing more than confirm a budget figure, the default response often seems to be:

No.

There's a simple reason that public employees deny, delay or refuse.

It works.

Many journalists give up at the first sign of trouble. There are plenty of reasons for that. Sometimes it's fear of an editor whose voracious appetite for copy means that expending effort on a records battle seems like time poorly spent.

Sometimes it's resignation to what seems like fate: They're not going to give it to me, so why try?

Sometimes it's the path of least resistance: I can fight for this story, or I can do one that's friction free.

So in the larger discussion of why it can be so difficult to get government officials to give us what is clearly ours, there's an uncomfortable truth:

A lot of this is our own fault.

Too many times, we've sent the message that we don't really need this information all that badly. Or that when the going gets tough, we'll go bother someone else.

There's no question government officials routinely violate the law by using intimidation and other tactics to keep public information private. This edition of the Journal is full of examples of such malfeasance.

It's also full of examples of journalists who didn't take no for an answer. Plenty has been done to document all the ways in which federal, state and local government officials fight to keep public information private. We wanted to talk about all the things journalists can do to try to make sure those efforts don't succeed.

You're not always going to win. Even when the law is on your side, it's sometimes incredibly difficult — or practically impossible — to get for the public what is rightfully theirs.

But there can be victory even in defeat. One major reason that information requests are denied is that, to the bureaucrat, it's the path of least resistance. If they say yes, they've got to get to work on this request. If they say no, there is a good chance the reporter goes away. And in fairness, many of those who work in government agencies are overburdened, thanks to the same kind of fiscal cutbacks that have hit our industry.

One thing that fighting a rejection does is erase some of the benefits of saying no. If an agency worker realizes they'll need to spend a lot of time justifying a rejection, it might be easier to just comply with a records request.

As you read the articles on the following pages, take notice of some of the strategies used by journalists who have succeeded in getting what they asked for. Take heart in their victories.

And don't take no for an answer.

Mark Horvit is executive director of IRE and NICAR. He can be reached at mhorvit@ire.org or 573-882-1984.

Introducing NICAR Courses

IRE has been training journalists for years and we decided it was time to share some of that knowledge with college instructors to help them prepare the next generation of journalists. With that in mind, we created NICAR Courses — everything instructors need to teach an introduction to data journalism using spreadsheets.

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IRE is adding two key members to our team



Anthony DeBarros joins Document-Cloud from Gannett Digital, where he was Director of Interactive Applications, leading a team that built data-driven interactives for investigations, elections and the Gannett platform as well as publishing tools for the company's journalists. Before joining Gannett Digital, he spent 15 years with USA TODAY as a database editor and investigative journalist, working alongside the newsroom's database team on demographics analysis and investigations.

He began his news career as a radio reporter in Poughkeepsie, N.Y., and a reporter and editor at the Poughkeepsie Journal. He's a 2012 winner of an IRE Service Award for making Census data easily available to journalists. He's also been part of teams whose investigations have received an Alfred I. duPont-Columbia University award, an Education Writers Association award, a Gerald Loeb award and other honors. A native New Yorker transplanted to Virginia, in his spare time he enjoys family, gardening, guitar, film and art.



Alex Richards is joining IRE as a member of our training team. Richards came to IRE in December from the Chicago Tribune, where he had been a reporter specializing in investigative data journalism. He was a finalist for the Pulitzer Prize in 2011 and was awarded the Goldsmith and the Scripps Howard Farfel investigative reporting awards, among others, for the Las Vegas Sun series "Do No Harm," with ProPublica's Marshall Allen. More recently, he shared IRE's FOI medal for

a series on Chicago's truancy epidemic. In addition to reporting from Nevada for the Sun, he previously helped manage data coverage and interactive news for The Chronicle of Higher Education in Washington, D.C. He's also an IRE alum, having worked as a data analyst for the NICAR Database Library while attending the Missouri School of Journalism.

Congratulations to the several IRE members who recently were recognized with 2015 duPont-Columbia Awards. Their hard work and dedication to good investigative journalism helps keep the public informed and educated on important topics that affect their daily lives and communities.

Wendy Halloran, Mark Phillips, Bryan West and Mark Casey, along with colleagues at KPNX 12 News in Phoenix, for "Raked Over the Coals." The team doggedly pursued and refuted claims that the city's arson squad had the highest arson clearance rate of any major U.S. city's fire department.

Madeleine Baran, Mike Cronin, Tom Scheck and the team at MPR received recognition for "Betrayed by Silence." The yearlong investigation looked at sexual abuse and cover ups in the Twin Cities Catholic Church.

Robert Little and Barbara Van Woerkom and colleagues at NPR were honored for "Guilty and Charged." The series exposed a "hidden two-tiered system of justice and informal debtors prison."

Brian Boyer, Alyson Hurt and Wes Lindamood, along with their colleagues at NPR and Planet Money, were recognized for "Planet Money Makes a T-Shirt." As part of the online project, the team designed and sold T-shirts to look at how the clothing is made across four continents.

Adam Walser, Fran Gilpin and Doug Iten, along with colleagues at WFTS-TV in Tampa, were honored for "Incapacitated: Florida's Guardianship Program." The team uncovered abuse and fraud by court-appointed guardians.

Clark Fouraker of WLTX-TV in Columbia, South Carolina was recognized, along with his colleagues, for "DDS: When the System Fails." The investigative series looked at "harrowing failures" in the state's Department of Social Services.

Noah Pransky and the WTSP 10 News team in Tampa Bay was honored for "Short Yellows and the Red Light Fight." The yearlong investigation exposed how local governments use technology to cheat drivers.

Multiple IRE members received National Edward R. Murrow awards for investigative and public service journalism.

R.G. Dunlop with Kentucky Center for Investigative Reporting was recognized for a story about a repeat offender who was given multiple chances by the judicial system and ultimately killed a teenager.

WCPO-TV reporter **Brendan Keefe** was honored for his investigation into the Cincinnati's faulty 9-1-1 system.

A national Murrow was also given to **Howard Berkes** of NPR for his work into the lack of enforcement of grain bin entrapments.

inewssource's **Joanne Faryon** was honored for her investigation into excessive spending of a school district using a special tax.

The Times-Picayune's **Manuel Torres** and WVUE's **Lee Zurik** were recognized for their joint investigation into Louisiana's campaign finance data. **Zurik** won a second award for a series of stories uncovering a coroner's abuse of tax money.

Several IRE members were recognized for investigative reporting by the Online News Association.

IRE Board member **T. Christian Miller** and members **Lena Groeger, Krista Kjellman Schmidt, Al Shaw** along with ProPublica colleagues received the Al Neuharth Innovation in Investigative Journalism Award (medium) for investigating accidental acetaminophen overdoses.

USA Today's **Brad Heath** was recognized with the Al Neuharth Innovation in Investigative Journalism Award (large) for his investigation into fugitives escaping justice by crossing state lines.

Board member **Ellen Gabler** of Milwaukee Journal Sentinel was honored with the University of Florida Award in Investigative Data Journalism for her exposure of deadly delays of newborn screenings.

IRE members **Madeleine Baran, Mike Cronin, Tom Scheck** along with Minnesota Public Radio colleagues were awarded the University of Florida Award in Investigative Data Journalism (small/medium) for MPR's investigation into Archdiocese of St. Paul and Minneapolis leadership and priest sexual abuse.

ABSENT AUDITS

Watchdogging leads to calls for dismissal of a high-paid city official

Tim Eberly
The Virginian-Pilot

City auditors can make great sources for reporters.

The two share a common goal: uncovering waste and abuse in city government. The right auditor can be an invaluable source by providing early warnings about their discoveries of wasteful government spending and other tips.

When I arrived in coastal Virginia fall of 2013 to cover the city of Portsmouth, getting to know City Auditor Jesse Andre Thomas was on my short list. But instead of becoming a source, Thomas became the subject of a series of investigative articles, largely centered on his productivity, or lack thereof. As one story begot another, the auditor controversy took on a life of its own, creating outrage among residents and dividing a city council.

Financial trouble

Portsmouth's need for an independent auditor bubbled up in 2013 when a grand jury report revealed that the school division, an arm of city governments in Virginia, had inappropriately squirreled away tens of millions of dollars for school construction without the city's permission. And one year earlier, the city had mistakenly cut \$1.8 million from the sheriff's budget.

The city council hired Thomas at a salary of \$95,481 a year. He was a certified public accountant with no previous municipal auditing experience, and he lived in the same gated subdivision as three council members.

By the time I began covering Portsmouth, in September 2013, Thomas had been on the job for about six months. After another seven months passed without sign of an audit, I gave him a call.

I asked him to provide any audit reports that he'd completed since starting the job in April 2013. He didn't have any. But he said he was on the verge of completing an audit of a city-owned entertainment venue that he would provide to me within days, after he gave it to City Council members.

The completion date set by Thomas came and went. So The Virginian-Pilot published its



Bill Tremann | The Virginian-Pilot

Portsmouth City Auditor Jesse Andre Thomas sitting in the audience during a September city council meeting. Several speakers before the council criticized members for retaining Thomas.

Instead of becoming a source, Thomas became the subject of a series of investigative articles, largely centered on his productivity, or lack thereof.

first story on the fledgling auditor: 14 months had passed, with no sign of Thomas' first audit.

The story got immediate traction. It was an easy issue to digest: the auditor who wasn't producing audits.

Pushing for documents

There were signs that I should keep digging. With Virginia's weak public records law on their side, Thomas and city officials refused to turn over documents such as Thomas' job application and resume and the identities of other finalists for his job.

I set out to determine Thomas' level of productivity. I filed a request for his work calendar, records detailing his Internet activity and the log-in history on his city computer. The city couldn't provide some of that information, but I did get Thomas' calendar and his log-in activity for the city's financial system.

Those records led to the second watchdog piece: Thomas' calendar showed sparse activity for his first year, including numerous months with nothing listed. He'd also logged in to the financial system only twice, both were brief and on the same day shortly after he started the job.

To paint a better picture of his work habits, I requested all of his emails since he began the job, including ones he'd deleted.

Thomas and the city again took advantage of the state's public records law, which defines public records as only those "prepared for or used in the transaction of public business." The city scrubbed all personal emails from the response, leaving me with 942 emails deemed to be public records from

his 15 months on the job. I also learned that it was Thomas himself who decided which emails to withhold or turn over.

I didn't get the detailed insight into Thomas' work day that I sought from the emails. But one did serve as the backbone of the next story.

In The Pilot's first investigative article on Thomas, I noted that he did not have an audit plan, which lays out the audits planned for the year.

Three weeks after that article, Thomas presented an audit plan to the City Council.

One of his emails, from the office of a neighboring city's auditor, shed light on how that plan came to be. It was sent to Thomas on June 19, the day The Pilot's first investigative piece on Thomas was published.

Attached to the email was a copy of the neighboring city's audit plan.

Four days later, Thomas gave an audit plan to his council that bore notable similarities to the other plan, even down to the cover letter.

The other city's auditor told The Pilot that Thomas had asked for a copy of his audit plan.

Thomas had told me four months earlier that he would provide his first audit to me within days. It turns out I wasn't the only person to whom Thomas had been making such promises.

Once the newspaper published those revelations, the scrutiny of Thomas intensified. An increasing number of residents reached out to council members, calling for Thomas to be fired.

Thomas shut off communication with me from early on in the investigation, offering little more than a "no comment" for each story.

When asked about the similarities of the two audit plans, Thomas said, "How are they similar?" before declining to comment further.

He publicly defended himself in a presentation to council members, in which he

glossed over the similarities of the audit plans and portrayed the newspaper's story as based primarily on similarities of the two auditors' cover letters.

The city council had placed Thomas on a 90-day probation period. It seemed likely that, at the very least, he would produce his first audit report during that time.

By the time that probation period ended in September, Thomas still had not released any audits. So I began reporting on a fourth story.

Thomas had told me four months earlier that he would provide his first audit to me within days. It turns out I wasn't the only person to whom Thomas had been making such promises.

Through another open records request, I obtained emails between Thomas and a deputy city manager, to whom for months Thomas had been stating that the completed audit report was forthcoming.

On May 2, the deputy city manager asked Thomas when city staff could expect to see the final audit report. It was her fourth such



Hyunsoo Leo Kim/The Virginian-Pilot

Portsmouth City Auditor, Jesse Andre Thomas, right, chats with Mayor Kenneth I. Wright, left, before a council meeting in June this year.

The Virginian-Pilot

Portsmouth city auditor

14 months on the job. 4 minutes logged in. 1 barren calendar. 0 audits.



Portsmouth Auditor Jesse Andre Thomas

By Tim Eberly
The Virginian-Pilot

PORTSMOUTH

The city auditor has logged in to Portsmouth's financial system only twice since he started the job 14 months ago, and both logins occurred within two weeks of his starting date, city records show.

Jesse Andre Thomas' work calendar for the past year shows sparse activity, including numerous months without a single meeting or appointment listed. Both city records were obtained through Freedom of Information Act requests. The findings come one week after The Virginian-Pilot re-

"You would expect to see some activity, maybe once a month in the least."

Lyndon Remias,
Virginia Beach's auditor

ported that Thomas had not released any audits in his time on the job.

Thomas' rule includes ferreting out fraud, waste and abuse of city resources.

In addition to scrutinizing policies and procedures, he's supposed to make recommendations to the City Council "with respect to various oper-

ational and financial analyses, conclusions and findings," according to his job description. When reached by phone Friday morning, Thomas declined to comment. Council members, however, responded to The Pilot's findings.

See PORTSMOUTH, PAGE 13

inquiry in a three-month stretch, according to the emails, which Thomas had withheld from my earlier records request. Thomas replied on a Saturday.

"Working on this over the weekend," he wrote, adding that he "would like to send it to council and cc you on Monday with final audit."

But that deadline also came and went.

Thomas would not discuss the status of the long-awaited audit for my story. He referred my questions to council members, who either didn't know the answers or wouldn't return my calls.

Justified outrage

Shortly after the story ran, the council met with Thomas in closed session to discuss the auditor's performance over the 90-day review period. When they emerged from the meeting, most of the council members declined to comment. One confirmed that Thomas was keeping his job and that he had presented work that satisfied the council.

Many citizens were baffled and upset, but most of the council members wouldn't explain their reasons for keeping Thomas.

Many citizens were baffled and upset, but most of the council members wouldn't explain their reasons for keeping Thomas. The next day, one of the council members revealed he or she had taped the closed-door council meeting and offered to give me the recording, on the condition that we didn't identify which member provided it. We agreed.

The content of the recording was remarkable.

Thomas claimed to council members that media leaks, specifically The Pilot, had prevented him from finishing his audit on the entertainment venue. He did not explain who leaked what information or how it prevented him from completing the audit.

The Pilot had previously reported that Thomas was conducting an audit on the entertainment venue, information that Thomas himself supplied in an interview, with no additional details about the probe.

The secret recording also revealed the rationale of council members, several of whom had refused to discuss the auditor controversy. Only one council member asked pointed questions of Thomas; the others largely came to the auditor's defense. The discussion also often veered to concerns of negative media



Go to PilotOnline.com to watch.

No landing gear? Pilot uses a stool.

Video shows a Harrier jet landing blindly but with pinpoint accuracy after equipment fails

By Kate Wiltrout
The Virginian-Pilot

Marine Capt. William Mahoney had just taken off from the Bataan when he realized that getting back aboard the amphibious assault ship was going to be hairy.

One of the four sets of landing gear on his single-seat Harrier wasn't working – the one directly beneath the cockpit of the "jump jet," which slows down and hovers before landing with a bounce.

Mahoney flew a low pass over the Bataan; observers confirmed that the nose gear was stuck. Then the landing signal officer in the ship's control tower suggested using a piece of equipment Mahoney had never heard of: a sort of padded stool placed on the flight deck that could cradle the aircraft's nose – if he could put the plane down just right.

See STOOL, PAGE 13



BILL TIERNAN | THE VIRGINIAN-PILOT

Joseph and Nancy Bloise in their Virginia Beach home with a high school graduation portrait of their daughter, Lois Schmidt, in the hallway.

"I'VE BEGGED THEM TO MAKE AN ARREST BEFORE I DIE."

It's been 10 years since a mother and son were slain

By Margaret Matray
The Virginian-Pilot

VIRGINIA BEACH THE MOTHER AND SON with matching brown eyes smile down from portraits on the wall.

Here she is in the hallway at 18, posing for her high school graduation photo.

Here he is in the dining room, dressed in his Tiger Scout uniform

and a baseball cap.

It has been a decade since Lois Schmidt and Jonathan Vetrano were here in this house.

Now, Nancy and Joseph Bloise visit their daughter and grandson at a cemetery. They trim the grass with clippers and wipe down the grave marker with a cloth to keep it tidy.

"It doesn't get any easier," Joe said. Ten years ago, someone killed Lois and Jonathan in the family's home. The killer shot and wounded Lois' 25-year-old brother, Morgan Bloise, killed one of the dogs

See COLD CASE, PAGE 12

TO OUR READERS

The front and Hampton Roads sections are now combined. Here's where you can find your favorite features.

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Roger Chesley Page 2

Obituaries Page 13

Opinion Page 15

partly cloudy
Highs near 80.
Details on the back of Sports

Growing Old Is Not For Sissies. Or People With No Long Term Care Planning.



Remember your favorite Taste Test winner?

On the eve of our 100th choice, we look back at many of our past winners
The Daily Break



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military REP. FORBES: IT'S OK TO SPEAK OPENLY ABOUT CHINESE THREAT.
Page 6

high expectations SPACE STATION GETS CUSTOM ITALIAN ESPRESSO MAKER.
Page 8

The average cost of long term care is \$6,000 a month, and 7 out of 10 of us will need it. Without a long term care plan, you could lose your assets, even your home. Plan now with the experts at Hook Law Center.

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attention rather than the auditor's job performance.

"Regardless whether we keep him or we don't, they're going to beat us up any damn way," one councilman told the others while Thomas was out of the room. "They're going to hang us out."

One of the members argued that the newspaper's coverage had been manipulated by city officials to keep Thomas from uncovering waste.

During that meeting, Thomas provided to council members an incomplete audit report of the city's police impound lot. It satisfied the majority of the council, which decided to keep Thomas in the position and pledged to do a better job overseeing him.

The Pilot continues to scrutinize Thomas. In addition to five investigative articles, numerous editorials have called for the council to fire him. As of late December, no action has been taken.

When he produces his first audit, I'll report on it, too.

Tim Eberly covers the Norfolk City Hall beat for The Virginian-Pilot. He came to The Pilot in September 2013, to move closer to relatives in Maryland, go crabbing with his wife and 5-year-old daughter and go surfing in the mornings before work. Before moving to coastal Virginia, Eberly worked for six years at The Atlanta Journal-Constitution. He spent the last four and a half years there as an investigative reporter.

Requesting Emails

- Don't ask for everything under the sun. Be as specific as possible on the first go-round. And if that doesn't capture what you're looking for, file a follow-up request that expands your search.
- If they try to run you off with a huge cost estimate, push back. Go talk to your newspaper's IT staff and learn how easy it is for them to extract emails from a computer network. It doesn't require an outside consultant charging \$75 an hour. Once you push back — and use some IT language to make your case — they'll back down.
- Find out beforehand how they plan to retrieve the emails. If you're seeking emails on a specific topic of conversation, they will most likely use search terms to retrieve the emails. And if you don't step in and give them the search terms that you think will give you the best chance of pulling those emails, some IT guy on their end is going to do it for you.
- Make sure you asked for all emails — both sent and received. And don't forget to ask for emails that have been deleted or "double deleted" but remain on the computer's hard drive.
- Ask for the emails in electronic format, such as a PST file. It'll save you the cost of paying for copies.
- Ask them who's going to decide which emails fall under the records request. More than once, a government agency has told me that they allowed the subject of my reporting to decide which emails to send my way. If you express concern about that on the front end, they're more likely to have a third-party staffer serve as the gatekeeper. In my opinion, it increases the chances that some emails don't get excluded from their response.



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U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

December 5, 2014

MR. BRAD HEATH
USA TODAY
7950 JONES BR
MCLEAN, VA

Dear Mr. Heath:

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SECRECY, SUBPOENAS AND SURVEILLANCE

Confronting new challenges to newsgathering

BY KATIE TOWNSEND, REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS

Access to information is vital for reporters. Through confidential sources or Freedom of Information Act requests, the ability to obtain information about the government is necessary for reporters to do their jobs and keep the public informed. Yet almost any reporter or editor will tell you that gathering information is more difficult than ever. Increased government secrecy, subpoenas, search warrants targeting journalists and the ongoing threat of government surveillance have made sources harder to come by and have obstructed the flow of information to reporters and, in turn, to the public. Reporters and news organizations are fighting back and taking steps to minimize the harm to journalists' ability to gather the news and report on the issues that matter most to the public. Although obtaining information about the government is likely to remain one of the biggest challenges facing reporters in the years to come, the Reporters Committee for Freedom of the Press and others are working tirelessly to help journalists confront and overcome those obstacles.

Since it was revealed in the summer of 2013 that the U.S. government had seized Associated Press phone records and emails of Fox News reporter James Rosen, warrants and subpoenas aimed at journalists, particularly in national security leak cases, have been cause for alarm. Journalists routinely rely on promises of confidentiality to sources in order to report the news. And with the U.S. Supreme Court in June declining to hear the appeal of James Risen, a Pulitzer Prize-winning reporter for The New York Times who has refused to testify about the identity of his sources, the government's relentless pursuit of leakers is jeopardizing journalists' ability to maintain confidential relationships with sources.

Risen's legal saga began in 2010, when the United States Department of Justice indicted former CIA agent Jeffrey Sterling on Espionage Act charges. The government suspected that Sterling had leaked classified information to Risen for his 2006 book "State of War: The History of the CIA and the Bush Administration." Risen was subpoenaed to testify, and he fought the subpoena. In July of 2013, a federal appeals court concluded that Risen had no First Amendment or common law right to refuse to testify

about the identity of his sources and, since the Supreme Court's denial of review, Risen has been in legal limbo. At a hearing in December, the Justice Department indicated that Risen would be subpoenaed to answer questions in advance of Sterling's trial, but that prosecutors would not specifically ask the reporter whether Sterling was his anonymous source. And there is additional confusion regarding what Sterling's attorneys will ask Risen, if anything. It is unclear whether Risen will be willing to answer any of the questions posed to him and, if he refuses to, he will be faced with fines and potential jail time. So, although Attorney General Eric Holder had indicated that the government will not seek to jail Risen for refusing to identify a source, as of now, the future for Risen remains uncertain."

POLICY CHANGES

It is unclear whether the President's appointment of U.S. Attorney Loretta Lynch to replace Holder will impact the Justice Department's approach to the press. But Risen's case is a striking example to which the government has been willing to go to pursue suspected leakers, and it demonstrates the need for greater federal protection for reporters who promise confidentiality to sources.

Forty-nine states and the District of Columbia have statutes or court precedents that offer such protection. (Wyoming hasn't addressed the shield law issue.) Yet, despite growing national support for federal legislation aimed at providing journalists a privilege against being forced to testify as to the identities of their sources in federal court cases, a reporter shield bill has stalled in Congress. After the Supreme Court declined to hear Risen's appeal in June, more than 70 media organizations, including the Reporters Committee, sent a letter to Senate leaders urging them to schedule a vote on a bipartisan shield bill, The Free Flow of Information Act (S.987). Congress, however, has yet to act, and further progress on the legislative front appears unlikely.

Justice Department policy is one area where journalists and news organizations have begun to see some improvement when it comes to limiting warrants and subpoenas targeting journalists. The department issued new internal media guidelines in Febru-



The U.S. Supreme Court in June declined to hear the appeal of James Risen, a reporter for The New York Times who has refused to testify about the identity of his sources. In 2013, a federal appeals court concluded that Risen had no right to refuse to testify.

ary of 2014. The Reporters Committee and a coalition of more than 50 news organizations had recommended revisions to the guidelines, which were originally written in 1970, to address situations like the department's subpoena for the AP's telephone records and the warrant targeting Rosen's email. Among other things, the current Holder guidelines now cover warrants, not just subpoenas, and make it more difficult for the department to withhold notice from a journalist or media organization when it seeks journalists' records from a third party telephone or email provider. Yet, while an improvement from the prior guidelines in certain respects, the Holder guidelines are far from a panacea. For example, while the guidelines now expressly apply to search warrants, they make no mention of national security letters or warrants issued under the Foreign Intelligence Surveillance Act (FISA), other legal mechanisms that the Department may use to obtain the records of journalists and news organizations.

Data provided to the Reporters Committee by the Justice Department in response to a request made under the Freedom of Information Act suggests that after 2010, when Risen was subpoenaed, the number of source-related subpoenas approved by the Attorney General fell. The Reporters Committee is in the process of seek-

Justice Department policy is one area where journalists and news organizations have begun to see some improvement when it comes to limiting warrants and subpoenas targeting journalists.

ing clarification from the Justice Department concerning this data, which does not appear, for example, to account for search warrants. But, according to the data provided by the Justice Department, at least one source-related subpoena was approved by the Attorney General just last year, making subpoenas and warrants targeting reporters a continued threat to the confidentiality of their relationships with sources.

Warrants and subpoenas are not, however, the only threat to reporters' ability to obtain information from government sources.

The revelations by former National Security Agency contractor Edward Snowden concerning broad government surveillance programs, coupled with new policies forbidding government employees from having any unauthorized contact with reporters, have also made sources reluctant to talk, even about routine, unclassified matters.

THE SURVEILLANCE AGE

In October of 2011, after Army Private First Class Chelsea Manning provided thousands of documents from a classified database to WikiLeaks, the government launched the Insider Threat Program to encourage government employees to report one another for suspicious behavior that might suggest an intention to leak classified information. And in March, Director of National Intelligence James Clapper issued a directive forbidding intelligence agency employees from talking with members of the media about any matter related to intelligence, even if it is unclassified. Only public affairs representatives and other government employees who are expressly authorized to speak to reporters may do so, and employees are required to report any “unplanned or unintentional contact with the media on covered matters,” which are broadly defined to include “intelligence sources, methods, activities, and judgments.” Government employees who violate this policy may be fired or lose their security clearances, a punishment that can effectively end a career in intelligence.

The Insider Threat Program and the Clapper directive have made many government sources unwilling to speak to reporters for fear of losing their jobs or damaging their careers. And the fear felt by many sources that any communication with a reporter, even about unclassified matters, could have life-altering consequences has been amplified by revelations of mass government surveillance of electronic communications in the United States and abroad.

It has been more than a year since Snowden made public the extent of the National Security Agency’s collection and surveillance of telephone and email communications, and the issue remains at the forefront of reporters’ concerns about maintaining the confidentiality of their communications with sources. A recent 120-page joint report by the American Civil Liberties Union and Human Rights Watch, “With Liberty to Monitor All: How Large-Scale U.S. Surveillance is Harming Journalism, Law, and American Democracy,” documents how sources’ fear of surveillance has made it increasingly difficult for reporters to gather news and keep the public informed. Numerous journalists have reported that an awareness of the NSA’s surveillance practices has changed the way they contact and communicate with sources, and in some cases it has even prevented them from pursuing stories.

Reporters and news organizations are increasingly turning to encryption and other technological solutions in an effort to keep their communications with sources secure. A growing number of news organizations, for example, are signing on to use SecureDrop, an open-source system managed by the Freedom of the Press Foundation that allows organizations to securely accept documents and communications from anonymous sources. But journalists and sources are largely operating in an area of uncertainty, particularly given the lack of public information about the way in which the government utilizes the data it collects on a mass scale. That uncertainty will continue to interfere with reporters’ ability to communicate with confidential sources or even establish relationships with sources in the first place.



New York Times reporter James Risen speaks this summer at a National Press Club briefing held in his support.

Reporters and news organizations are increasingly turning to encryption and other technological solutions in an effort to keep their communications with sources secure.

There are signs that courts are becoming more skeptical of warrantless mass data collection by the government. In June, the U.S. Supreme Court held unanimously that the Fourth Amendment requires the government to obtain a warrant before searching a cell phone seized after an arrest. The Court’s decision in *Riley v. California* has implications not only for cases involving digital records searches but also for those challenging the NSA’s bulk record collection as well. But whether courts will set meaningful limits on the ability of the government to monitor electronic communications between reporters and their sources remains to be seen. In the meantime, reporters and news organizations will be forced to continue to look for new ways to safeguard communications with confidential sources.

TRANSPARENCY ISSUES

Even if they don’t cover national security or rely on sources within the federal government, reporters continue to face obstacles when it comes to gaining access to government information pursuant to FOIA and state public records laws. The Associated Press recently reported that federal agencies have denied a growing number of FOIA requests each year under the Obama Administration. For instance, government use of FOIA’s Exemption 5, which was originally intended to “protect the quality of agency decisions,” has grown exponentially. In 2013 alone, it was invoked 82,752 times to deny requests for information. Reporters are encountering similar denials from state and local government agencies under state open records laws, as well as difficulty obtaining access to court proceedings and judicial records. Not surprisingly, the Reporters Committee fields countless calls each

year from frustrated reporters unable to gain access to state and federal records that should be open.

In part due to the growing need for freedom of information and access litigation to be pursued for the benefit of the press and the public, earlier this year the Reporters Committee hired me as its first litigation director. Reporters Committee attorneys will now be able to pursue impactful court cases aimed at vindicating the right of reporters and the public to obtain access to information about their government.

Reporters today face enormous challenges when it comes to gathering the information that enables them to report effectively on matters of public concern. Now, more than ever, they are being forced to fight for their ability to gather the news and keep the public informed. But they are not alone. The Reporters Committee is now, as it has been for the past more than 40 years, committed to supporting reporters in that fight.

Katie Townsend, a former litigation associate in the Los Angeles office of Gibson, Dunn and Crutcher LLP, is the Reporters Committee for Freedom of the Press' first litigation director. In May 2014, Townsend was named a "Rising Star" – one of the nation's top media and entertainment attorneys under the age of 40 – by Law 360. Townsend is a 2007 graduate of the University of Virginia School of Law.

Reporters Committee Resources

24-Hour Legal Defense Hotline: 1-800-336-4243

Website (rcfp.org):

- The First Amendment Handbook
- Federal Open Government Guide
- State Open Government Guide
- Reporters' Recording Guide
- Digital Journalists Legal Guide
- Other topical reporting resources

iFOIA (ifoia.org): Online system for filing and tracking state public records and federal Freedom of Information Act requests.

Reporters Committee Mobile First Aid App (rcfp.org/app): On-the-spot open government information for every state, available for every mobile device.

IRE Training Opportunities

IRE is offering one-day Watchdog Workshops designed for reporters, editors and producers from small, midsize and large publications, TV stations, Web-only news sites and news blogs.

Get the tools and the tricks of the trade that you need to be a better, faster watchdog journalist.

Join us for a second optional day of hands-on Excel training.

More details on the upcoming watchdogs can be found at <https://ire.org/events-and-training/watchdog-workshops/>.

» **January 31-February 1, 2015: Baton Rouge, LA**

» **February 13-14, 2015: Nashville, TN**

» **April 8-9, 2015: Madison, WI**

TRACKING LITIGATION

Record number of Freedom of Information Act suits filed

BY GREG MUNNO AND SUSAN LONG, TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE

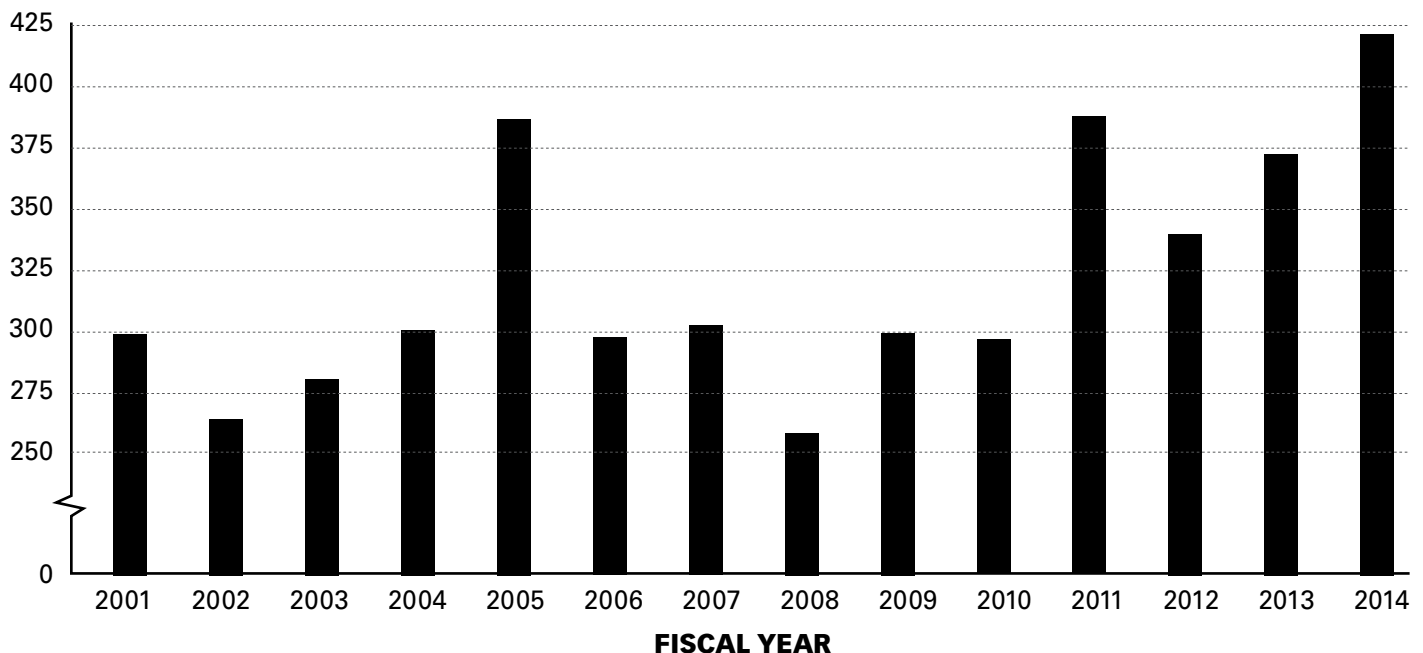
More freedom of information lawsuits were brought against the federal government in fiscal year 2014 than in any year since at least 2001, according to a new analysis of court records by the Transactional Records Access Clearinghouse (TRAC). A total of 422 Freedom of Information Act suits were filed in federal district court last year compared with 372 in FY 2013 and 387 in FY 2005, the next highest year since 2001. These counts represent all cases where the nature of the suit is listed as FOIA, the law that requires federal agencies to disclose records to any person making a written request unless the records fall into one of nine categories of exemption.

News media, however, continue to be relatively small players as plaintiffs in these suits. Legacy news organizations brought only six of the 422 FOIA suits last year, and all were filed by The New York

Times. Several more suits were filed by newer media organizations, and at least two daily newspapers have brought FOIA suits already in FY 2015. But compared to the total number of suits filed, the news media's participation as FOIA plaintiffs is relatively low. A previous TRAC study that examined filings for fiscal years 2005 through 2012 found about the same level of media participation.

Who is bringing these suits? It's a diverse group of individuals and organizations, but a few players stand out as being particularly active. At the top of the list is the conservative research group Judicial Watch, which brought at least 34 FOIA suits as a plaintiff in FY 2014, and several more as counsel. Up next would be the American Civil Liberties Union and its affiliates, which filed a combined 10 FOIA suits last year.

FOIA suits filed



Last year, a record number of FOIA lawsuits were filed, which includes media and members of the public, according to FOIA Project data.

The findings from the current and previous TRAC studies were derived from an examination of the plaintiffs in all federal lawsuits recording FOIA as the nature of suit. The suits, dockets, complaints and opinions have been compiled and made accessible by the FOIA Project on foiaproject.org. The Project maintains a comprehensive database of more than 22,127 documents from 6,140 district and appellate court cases filed or closed since Oct. 1, 2000. It updates daily.

Among the six New York Times FOIA suits during fiscal year 2014, four of them were brought as a result of stories being worked on by Charlie Savage on a range of topics that include the medical treatment of Guantanamo detainees and investigations into destroyed videos of CIA terror suspect interrogations. You can find the other cases referenced in this report using the FOIA Project's case search tool.

Also bringing suit in FY 2014 were ProPublica, Muckrock, and the company that publishes of the Washington Examiner. BuzzFeed is among the new media organizations that has brought suit early in FY 2015.

Individuals working as reporters also bring suits on their own. Shane Bauer, a reporter for Mother Jones and one of three Americans detained in Iran when they accidentally crossed into the country from Iraq, filed two suits in fiscal year 2014, one of which the FOIA Project highlighted in a recent blog post. Meanwhile, Jason Leopold, an investigative reporter for VICE News, filed eight FOIA cases in fiscal year 2014 and has already filed seven more in the current fiscal year. Former CBS reporter Sharyl

Attkisson also brought a FOIA suit on her own in FY 2014. She is being represented by Judicial Watch. She is also party with Judicial Watch in another FOIA suit filed in FY 2015.

There may well be other individuals working as reporters who filed FOIA suits that we failed to identify as journalists.

While the number of FOIA suits filed by media organizations during fiscal year 2014 outpaced the number of media FOIA filings in recent years, this is a very low bar. According to TRAC's previous report, FOIA lawsuits filed by media companies ranged between three and nine each year. This past year, depending upon how broad a definition of news media is used, the count was at least 11 out of a total of 422 lawsuits filed during fiscal year 2014. Both analyses exclude cases by individual reporters unless the media organization is listed as a party to the suit.

A question we are interested in is: what is the trend in terms of outcomes of these lawsuits? Are the courts finding that the government is withholding improperly more or less than in years past? TRAC has hired Harry Hammitt of Access Reports using a grant from OpenTheGovernment.org to annotate FOIA lawsuits

Greg Munno is an assistant research professor at the Newhouse School of Public Communications, and Susan Long is an associate professor of managerial statistics at the Whitman School of Management. Data assistance was provided by website manager Jeffrey Lamicela. All three are with the Transactional Records Access Clearinghouse, a data research center at Syracuse University that, among other activities, maintains the FOIA Project. For more information, visit trac.syr.edu and foiaproject.org.

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Successful Suits

Pursuing public records requests in court

BY FRANK DENTON, FLORIDA TIMES-UNION

Some public officials may think newspapers have gone soft on open government legal action because of the financial traumas and transformations our industry has undergone. We may not be willing to invest in court battles, they may presume, and of course, they have limitless pots of taxpayer money to defend.

We need to remind them the law is the law, and we are serious about using it. As I said in the Columbia Journalism Review recently: We're still here, we're still strong, and we're still raising hell.

Journalists seeking to liberate public records and pry open meetings that should be public will be most successful if they are backed up by an implicit — or even explicit — “or else.”

The Florida Times-Union started establishing its “or else” credibility with public officials two years ago. The mayor's office was stalling in releasing some routine budget-preparation information and ignoring our FOI requests that segued into warnings.

Finally, we sued, and the mayor produced the records within 48 hours. We went back to court and asked for our attorney fees, as provided in Florida law. We settled with the city for \$15,000. When the check arrived, we photographed it and ran it on the editorial page with an editorial and this headline: “This is your money. Kiss it goodbye.”

We have sued three times in state courts the past three years, and as a result, records custodians are now much more responsive to our requests. Our assertiveness on other open government fronts also encourages officials' compliance with the law.

Before suing, you must first exhaust all possibilities and try to find resolution outside the court system. Journalists should be reasonable and understand legitimate reasons can cause some delays in getting responses. The trigger to filing suit is when you've exhausted all other ways to get the information and there is no legitimate reason the records haven't been provided. If you go that route, it's important to have a good lawyer to consult with about the best time to sue, since wait time can depend on state law.

When the Florida Department of Education started using “value-added” measures as part of teacher evaluations, we requested the entire database, so we could examine the validity of the process and share it



with the public. The state argued because it was part of teacher evaluations they could not release it. There was a lot of back and forth. Finally, we had to sue. The state teachers union joined the state in trying to keep the records secret. It was no surprise that we lost in the trial court. But as expected, we prevailed in the appeals court, got the VAM scores and produced some solid journalism that allowed the public to see the substantial flaws in the evaluation system.

The law says we should get our attorneys' fees, but the appeals court declined, citing a technicality. We appealed to the state Supreme Court and are awaiting its decision on the fees. Refusing attorneys' fees would greatly undercut our “or else” credibility.

Meanwhile, the City of Jacksonville somehow found itself in secret negotiations with its Police and Fire Pension Fund and its police and firefighter unions to come up with reforms in their very generous pensions that threatened to overwhelm the city budget. The fire union president filed a lawsuit in federal court widely assumed to be bogus, but all the parties quickly and quietly asked for mediation, which can be private. The magistrate approved, so the parties sneaked out of town and worked out the secret deal.

They assumed that the federal court trumped the state sunshine law that says collective bargaining must be publicized and done in the public. We disagreed and sued the mayor, the city and the Police and Fire Pension Fund for violating the state sunshine law. We also went into federal court and got the judge to bar any more such “mediation;” she did not seem amused that the city and

unions had used her court to try to circumvent state open government law.

The city tried to intimidate me (the suit was in my name, as a Florida resident; our company is based in Georgia) and our attorney by calling our lawsuit “frivolous” and threatening to come after us personally for their attorneys' fees. Our attorneys reminded them that it is against state law (called an anti-SLAPP statute) to try to intimidate or thwart a citizen exercising his or her First Amendment right to seek a redress of grievances. They backed off.

And we won summary judgment. The judge ordered the agreement to be tossed out and the parties to begin entirely fresh negotiations in public. That has been done, and a new pension-reform plan is now being considered by City Council.

But still the mayor, the city and the fund appealed — and the appeals court quickly and completely affirmed the lower court decision. At that point, under pressure from the City Council, the mayor said the city would not appeal further. But the fund is asking for a rehearing.

When we win that, of course, we will go after our attorneys' fees, which were ordered by both the trial and appeals courts. The issue is the amount, which will be well into six figures.

I've already got the editorial headline written.

Frank Denton was editor of the Wisconsin State Journal for 17 years and has been editor of The Florida Times-Union since 2008. He is also vice president for journalism of the parent company, Morris Publishing Group; president of the Florida Society of News Editors and a board member of the Florida First Amendment Foundation.

Appeal to Attorney General

Legal opinion is a free option for journalists in some states

BY KRISTINA GOETZ, KENTUCKY CENTER FOR INVESTIGATIVE REPORTING

For most of 2014, the Kentucky Center for Investigative Reporting has been locked in a public records battle with the University of Louisville over a high-profile report on the school's financial controls. When school officials refused to turn over the report, emails and other related documents, KyCIR filed an appeal to the Kentucky attorney general.

KyCIR filed the appeal because we believe the financial health of a public university is the public's business and that the information was especially important in light of some high-profile thefts by university employees in recent years.

In April, KyCIR filed an open records request for the university's contract with the outside auditing firm charged with conducting a review of the school's financial controls; all correspondence, including notes, emails, memos and other documentation regarding the work; and the firm's findings, including any reports and drafts. Initially, the records administrator said she didn't identify any records outside the school's regular audit process, such as emails and memos. KyCIR sent another email clarifying the request, naming the company and including more details the newsroom knew about the process.

For weeks KyCIR went back and forth with the university over email. Each time, the records administrator said she was still working to determine which documents could be released or "what records exist." KyCIR continued to push, telling the university plainly: "We know it exists."

Finally, at the end of May, school officials said they would turn over the contract and payment information. But U. of L. refused to turn over the report, despite the fact that the university had already paid the firm. We filed the appeal to the state attorney general, believing strongly that the law was on our side.

The day the university's response was due, U. of L. released the final report. Some university insiders and community members wondered if the final report was substantially different than the earlier draft. Without examining all of the documents that went into the creation of the final report, it is impossible to determine what the real problems are at the university and whether the new protocols will address them.



Eleanor Hasken | Kentucky Center for Investigative Reporting

The University of Louisville initially refused to turn over a consultant's report on the school's financial controls. Kentucky Center for Investigative Reporting filed an appeal with the state attorney general.

The AG's office rendered its opinion in August, finding that U. of L. had violated the state's open records law by failing to respond within three business days, by failing to provide enough information about a document it withheld under an exemption and by not conducting a reasonable search of people likely to have documents concerning the report.

U. of L. did not violate the open records law, the opinion said, by refusing to turn over the draft because state law allows "nondisclosure of preliminary recommendations ... until they are incorporated into the final agency action." Now that the report has been finalized, however, KyCIR believes the opinion makes clear that school officials must release preliminary documents that were expressly made part of the report and any others that formed the basis of the university board of trustees' final action.

So far, U. of L. officials have turned over only a handful of emails regarding the report. We want to provide the public with a full accounting of problems identified by the outside auditing firm hired to conduct the review. What was the foundation upon which these recommendations were made? One recommendation, for example, was to ensure that all of the school's computer systems were subject to the same security controls. But what were the problems in the first place? Was there a breach? And, if so, who was responsible?

The final report released by the university had no such details, but rather a list of recommendations. The report said nothing about how the university came to these recommendations or what came up during this internal review. Yet answers to these questions are vital to the public's trust in this long-standing institution.

In Kentucky, anyone can file an appeal of a public records denial by a state agency. It's relatively easy, it doesn't require an attorney and there is no fee. For other reporters in similar situations, we'd suggest trying to get cooperation from sources with access to the information. It doesn't always work; in our case, no one came forward with draft copies. In fact, the draft copies shared with the board of trustees were counted as they were passed out and then collected at the end of the meeting.

We are currently reviewing our legal options. One present challenge is that most firms in and around Louisville have done work for the school in the past. We've had more than six attorneys so far cite a conflict.

Still, we are pushing the issue, and we intend to continue our fight for access to these public documents.

Kristina Goetz is a reporter for the Kentucky Center for Investigative Reporting. She has worked for The Cincinnati Enquirer, The Commercial-Appeal in Memphis, and the Arizona Republic. She was also a researcher for former Watergate reporter Carl Bernstein on his biography of Hillary Clinton.



Fightin' FERPA

How one student battled his own university

BY JOEY STIPEK, THE OKLAHOMA DAILY

"Those who don't stand for something will fall for anything." This modern proverb is essentially why I continue to fight for access to student parking citations at the University of Oklahoma.

It started in 2012 when I was curious to see if student leaders at the university were receiving favoritism in regards to parking tickets, which is nearly a million dollar revenue source for OU. As a reporter for OU's newspaper, *The Daily*, I filed an open records request for all student parking citations issued for the spring 2012 semester.

OU denied my request. They cited the Family Educational Rights and Privacy Act (FERPA) and Oklahoma's Open Records Act as the reason for refusing to disclose student parking citations.

OU drew what I considered to be a hard line in the sand in November 2012. That is when its open records officer told me in an email that "any record that contains information that is directly related to a student and is maintained by the university is protected by FERPA."

I knew at that point that no matter how many stories I wrote, they weren't going to release the records. I felt like I had no choice but to file a lawsuit.

I have never sued anyone before, but I thought the rewards outweighed the risk. Certainly filing this lawsuit hasn't been the easiest process.

If someone is preventing you from reporting a story, write about it. I have only written two stories about student parking citations, but there are times when I wish I had written more stories to place pressure on the university.

After filing suit, I continued to gather what information I could regarding the parking tickets. I received access to student tickets at Oklahoma City Community College. Other schools, including OU released parking ticket records for university administrators, faculty and staff.

When facing denials, use FOI resources, such as a state nonprofit dealing with FOI-related issues. FOI Oklahoma, for example, with Oklahoma State University journalism professor Joey Senat and the Tulsa World's Ziva Branstetter as president, has been a



ABOVE: Oklahoma City Community College was forthcoming with student parking tickets. They granted the reporter access when OU would not.

Joey Stipek | The Oklahoma Daily



LEFT: Oklahoma University continually denied FOI request for information on student parking tickets, even after giving up tickets for administrators, faculty and staff.

Blayklee Buchanan | The Oklahoma Daily

valuable ally and awarded us with a \$2,000 grant to help support the lawsuit.

If you are a student who was given similar excuses such as FERPA as a reason to withhold information, you can utilize the Student Press Law Center. SPLC, with Frank LoMonte, Adam Goldstein and Sara Gregory, has been a great resource.

I have yet to pay any legal fees. Everything is being done pro-bono by my attorney Nicholas Harrison, alumnus of OU and *The Daily*.

In November this year, *The Daily* joined me in the lawsuit. Later that same day, OU President David Boren decided to make student parking tickets available through

the university's open records office. The next day, Oklahoma State University, which was not part of the suit, decided to make student parking tickets available through their open records office.

As of late December, I'm analyzing a huge dataset detailing nearly 248,000 OU tickets over a five year span and hope to publish soon.

Joey Stipek is the Special Projects Editor for The Oklahoma Daily and webmaster for OUNightly.com. He currently attends the University of Oklahoma, where he studies online journalism and computer science.



Fighting Without Suing

Strategies for getting records out of their grubbies

BY DAVID CUILIER, UNIVERSITY OF ARIZONA

When government illegally denies your public records request, and you don't have the time or backing to sue, sometimes you need to use a little stealth mental magic. Below are psychological strategies to get the records you – and the public – deserve to see.

Apply negotiation jujitsu

Bend like the willow, don't break like the oak. Allow officials to vent and don't react to outbursts. Use silence after an unreasonable attack. The official will see that you aren't going to escalate the confrontation and it gives you time to cool down. Maybe a clerk will say the information won't be helpful to you. Instead of snapping back, say "I am interested in what you are saying. Are there other records that would be better?"

Allow face-saving

Sometimes officials dig in their heels and feel like they can't change their mind, lest they lose face. Allow several outs early on. "I know you aren't hiding anything. Maybe the attorneys can look at the law and see if the information is disclosable."

Listen

Listen and then repeat what you heard. It shows that you are open to their concerns. Acknowledge their interests. "I understand you don't want to let personal information get out. I don't either. Let's figure out a way to redact that information so we don't let anything out that shouldn't be released."

Use "I" talk

Use "I" statements, not "You" statements. For example, say, "I think these records will be of interest to your constituents," rather than, "You need to give these out because your constituents will appreciate it." Also, use questions instead of statements. Statements are threatening: "The law says you need to provide the information." Questions are nonthreatening: "Can you show me in the law where it says that information is secret?"

Resources

- *Influence: Science and Practice*, by Robert B. Cialdini (2008, Pearson).
- *Getting to Yes: How to Negotiate Agreement Without Giving In*, by Roger Fisher and William Ury (1991, Penguin).
- *The Art of Access: Strategies for Acquiring Public Records*, by David Cuillier and Charles N. Davis (2010, CQ Press).

Get side-by-side

Avoid talking to a clerk on one side of the counter with you directly facing from the other side. This physical configuration sets up subconscious psychological opposition. Talk side-by-side.

Authority

Psychologically, "authority" can help persuade a clerk to provide the records. Make sure to cite the state law. Have a follow-up letter sent from an attorney or your publisher/owner. Get the attorney general's office to chime in.

Write about it

If a public agency denies a legitimate public records request, in violation of a state law, it's worth a story. We would write a story if the mayor broke another law, right? Use one of several good denial news pegs:

- Law breakers. It's newsworthy and ironic when government knowingly breaks the law. Verify that the agency is breaking the law, get the agency's response, and focus on why it matters to the public.
- Rogue agency. Find out how other agencies handle the dissemination of the same records. It's newsworthy when an agency is deviant.
- Under investigation. Contact your state's attorney general, auditor, governor, or other official whose job it is to oversee compliance with public records laws. If they look into the matter, you have a story: "Attorney general to investigate mayor's refusal to provide text messages."
- Board questions staff. Ask each member of the governing body what he

or she thinks about the staff keeping the information secret. When a city council member says the information should be public then write about it.

- Mass noncompliance. Conduct a public records audit in your county or state and find how all agencies respond. Methodical research is newsworthy.

Rally Allies

Don't fight alone. A lot of groups out there are up for helping, even if just to get a good quote from a story. The Society of Professional Journalists' sunshine network provides help for every state (<http://www.spj.org/foi.asp>), and also has a Legal Defense Fund to help with litigation. About half the states have public record ombudsman offices, as does the federal government (<https://ogis.archives.gov/>). The Reporters Committee for Freedom of the Press provides in its Open Government Guide sample appeal letters for FOIA, as well as tips on appealing (<http://www.rcfp.org/federal-open-government-guide>). It also provides a legal defense hotline free to professional journalists, 1-800-336-4243. High school or college journalists can get free legal help from the Student Press Law Center (www.splc.org). The National Freedom of Information Coalition hosts a Knight FOI Fund to help cover court costs (<http://www.nfoic.org/knight-foi-fund>).

David Cuillier, Ph.D., is director of the University of Arizona School of Journalism in Tucson, Ariz., and Freedom of Information Committee chair of the Society of Professional Journalists. He is co-author, with Charles Davis, of "The Art of Access: Strategies for Acquiring Public Records."



Battling for Data

Roadblocks to getting your data, and how to fight them

BY DENISE MALAN, INN/IRE

When I worked at a newspaper in Texas, we asked the county DA's office for a database of every adjudicated felony in the past 10 years, what should have been a pretty straight-forward public information request.

But an official used a common excuse for not providing data, telling us their software was proprietary and that there was no way to export the database. We tried contacting the county's IT department for help, but no one would talk to us.

So we kept trying to work with this official. She was adamant that only courthouse computers could access this software. We finally threatened to request through FOI the name of their software, thinking we could talk to that company and find a way to export the database.

She eventually relented and told us the name of their "proprietary" software. You might have heard of it: Microsoft Access.

To this day, I can't decide if she was completely ignorant or willfully trying to block us from getting that data. (We got it out of her that day, thank you very much.)

And sadly, this isn't an isolated incident. Any time you file a request for public records, you could encounter any number of roadblocks such as this one. That is especially true for data requests.

Just like with any records requests, when you get pushback on your data requests, don't give up. Whether your FOI contact is vindictive or just clueless, there are things you can do to get what you want in the format that you want it.

First, know the law. The federal law requires agencies to give you information in the format that you requested it "if the record is readily reproducible by the agency in that form or format."

Many states have similar provisions. It's important to request a reasonable format, which is why IRE often encourages reporters to request data as flat text files. Most (if not all) programs can easily export a text file, such as a CSV (comma-separated values), and they are easy to work with. You could also ask generally for any electronic format, but some FOIA officers believe that PDFs fall into this category, and that's really NOT what you're after.

Second, don't necessarily believe what they say. If they tell you that they can't ex-



	A	B	C	D	E
9		4,106	3,480		
10	ENTERING/BURGLARY	392	381		
11	BURGLARY	3,861	401		
12	DISRUPTING PEACE	2,888			22
13	DRUG SALES, MANUFACTURING	694			0
14	DRUG USE/POSSESSION	6,489			3
15	FIGHTING	25,589	252		20
16	HARASSMENT	1,608	183		1
17	HOMICIDE		2		0
18	KIDNAPPING		2		0
19	LARCENY/THEFT/MOTOR VEHICLE		1,994		1
20	OTHER MAJOR OFFENSES		909		8
21	ROBBERY		178		1
22	SEXUAL BATTERY		28		0
23	SEXUAL HARASSMENT	1,608	183		0
24	SEX OFFENSES	1,356			0
25	THREAT/INTimidation	4,038			8
26	TOBACCO	4,446			
27	TRAFFIC VIOLATIONS	623	318		
28	UNLAWFUL POSSESSION	832	522		
29	UNLAWFUL POSSESSION	1,802	1,802		

port the data, find out what software or program they're using and do some research. Most likely they just don't know how to export the data. If they tell you it's going to cost 20 hours of computer processing time (at \$100 / hour), first of all find out who on staff is making \$100 / hour and then ask for an itemized bill: what exactly will this person be doing for 20 hours? Sometimes they will try to make it seem as though it's just too large or too complicated for you. Try responding with some technical verbiage — "most relational database managers can export delimited text files with a few lines of SQL..." — to indicate that you know what you're talking about; it might signal to the person you're dealing with that they really need to put you in touch with someone who actually works with the data.

Third, always try to talk to the people who manage the data. Most likely the FOI officer does not; one told IRE once that there was no documentation for the requested database. A student went back and forth several times before he got the name of someone who worked with the data, who then sent a record layout. If you can access someone who actually knows what's possible and what's not, you have a better shot at getting

what you want. You can even invite the FOI officer to be on the call.

Finally, consult others. Journalists throughout the years have been confronted with truly ridiculous and bizarre responses to data requests, and many share these and their pushback strategies on forums such as the NICAR-L listserv (ire.org/resource-center/listservs/). Organizations such as The Reporters Committee for Freedom of the Press (rcfp.org) and the National Freedom of Information Coalition (nfoic.org) have some good resources, particularly for helping you understand federal and state open records laws.

Liz Lucas contributed to this article.

Denise Malan has been a journalist for 10 years. She was data/investigative editor at the Corpus Christi Caller-Times in Texas for three years, and in June 2013 she became data director for the Investigative News Network and IRE, coordinating data projects among nonprofit newsrooms across the country.

Liz Lucas is the director of the NICAR Database Library. She came to IRE from The Center for Public Integrity in Washington, DC, where she analyzed data for investigative projects. She worked on Poisoned Places, which won the Sigma Delta Chi award for Public Service journalism from the Society of Professional Journalists and was a finalist for the Goldsmith Prize.

BLOCKED

Fighting censorship by PIOs

BY KATHRYN FOXHALL

Over the past 20 years there has been a surge in government offices and other employers prohibiting staff from ever speaking with journalists unless they first ask the public information officer or someone in management.

In addition to surveillance that silences employees about anything their bosses disapprove of, such policies often cause massive delays and officials frequently deny interview requests outright.

What should journalists do?

- Most importantly go after, what I call “Censorship by PIO” for the deep corruption it is. Any entity that prohibits people from communicating except when they notify the authorities is keeping information from the public. And that’s a misallocation of resources as serious as any other we investigate. It also creates an opacity that’s fertile ground for malfeasance and an unconscionable conflict of interest allowing officials to strangle investigation of their actions.
- Investigate how long it has been happening in your area. Why do officials feel they have a right to do this? How often are delays and blockages happening? What about the many times staff have tipped reporters off to serious issues? Are officials trying to stop that process?
- Home in on one incident or series of non-responses. Who in the food chain said a staff member could not speak? What was withheld? What were the power plays and the political motivations?
- Ask why the public should trust official reasoning like, “We have to coordinate the story. We just want to know what is going on. We need to tell reporters the right person to talk to.”
- Explain it to the public. It’s not “inside baseball.” It’s the public’s business. If you don’t feel you can write an unbiased news story, make it an editorial.
- Explain it when it happens. Don’t just say, “XYZ agency declined to make an expert available.” Say instead, “XYZ agency prohibits all employees from speaking to the press about anything unless they notify the press office. It often denies such interviews. The PIO did not explain why experts could not speak to this reporter.”
- Collaborate with journalists, news organizations and journalism groups on resistance. Have reporters take turns at agency briefings asking to speak to the internal experts without the PIO guards. And report the response.
- Don’t kid yourself that your great reporting skills are all you need to produce a story. Millions of employees have been told to shut up. So chances are good some silenced staff, including those you talked to after going through the PIO, could blow your award-winning story out of the water. They could educate you about the mind-blowing stories you don’t have a clue about.

- Remember journalists’ acquiescence to “Censorship by PIO” is just as dangerous as what they are trying to cover up. For instance, the press did hundreds of stories that CDC and FDA handed out this year. But with PIO guards on us, we didn’t get (and probably could never have gotten) the fact that there were not strong, consensus guidelines for Ebola containment in place and there was a storeroom for pathogens that hadn’t been inventoried in decades, such as the one containing smallpox.

In the meantime, as we fight the policies, we are obliged to use all techniques possible to undermine the blockages.

- Rely on PIOs as little as possible. Get away from PIO and agency oversight whenever you can, including during routine reporting. Many people will say something different away from the guards. Find out for yourself who you should talk to. Analyze staff listings, hearings and meeting agendas. Ask outside sources who in the agency works on the issue. Use search engines and literature searches to pinpoint who in an agency spoke or wrote on an issue. Then study their part of the hierarchy.
- Contact people directly and tell them you want to talk to them, even if you have to contact the PIO also. Sometimes the internal expert will advocate for the interview.
- Interview other sources and then contact the inside source in hopes they will want to respond to what you know.
- When you talk to a source, even if the PIO is listening in, ask who outside the agency is working on the issue. The source may mention an interest group or person the agency is actually talking to.
- Consider holding the source, particularly if they are an official, responsible: “Mr. Doe did not respond to attempts to contact him.” They should be responsive even if agency cultural norm is to hide behind the PIO.
- Keep a record of responses and non-responses and hold agency leadership and elected officials accountable.
- At least occasionally, make incessant follow-up calls or email. I contacted CDC about newborn circumcision 20 times as PIOs repeatedly refused to let me talk to their experts. Then I wrote a press release about it. Let your audience know what subject the agencies are blocking information on.
- Go to obscure meetings or sessions. Speakers sometimes forget reporters could be there.
- Regularly give agency staff every possible way to contact you.

Kathryn Foxhall is a freelance health reporter in the Washington, D.C., area. Prior to the “Censorship by PIO” rules, she talked to experts at the CDC, FDA and elsewhere fluidly and often in confidence, as did many other reporters.

LOBBYING FOR TRANSPARENCY

Taking the offensive position for state open government legislation

BY HOLLIE MANHEIMER, GEORGIA FIRST AMENDMENT FOUNDATION

When the current Georgia attorney general began his first campaign, he pledged to rewrite our state's open government laws. We paid little mind, because many politicians had made similar claims only to forget these plans after winning election. But in this case, our attorney general circulated new legislation, which we initially found unfavorable, within his first year of office.

He also welcomed all stakeholder viewpoints. The Georgia First Amendment Foundation (and others) promptly scheduled a meeting and traveled to his downtown office with a laundry list of concerns. The attorney general quickly made clear to us that city and county governments, hospital associations, state agencies and others were all giving him input.

If we wanted to influence the process, we would have to do more than stand back and criticize; we would have to provide research and language for the bill. We were invited to participate in a series of marathon sessions to write, re-write and re-write the proposed law. So we learned one of the most significant lessons in many years: as an advocate for government transparency, we had to get deeply involved in the legislative process.

It paid off, and we ended up strengthening some aspects of the law, including lower costs and fees, mandatory rolling production of documents, increased time to challenge closed-door meetings, and perhaps most importantly, enhanced penalties for violations of the law.

This experience enabled GFAF to become synonymous with its core issue in the eyes of even more legislators than it already had been. And while lobbyists aren't always well thought of, the reality of the lawmaking process is that being present for as long as it takes makes all the difference, even if you do get labeled as the "open records lobbyist."

In the past, it has been typical for various legislators to run their legislative proposals and initiatives by GFAF before proceeding. More often than not, GFAF testified before the various General Assembly committees as to why legislation was good (or bad) for the freedom of information. Yet while GFAF had become the "expert" witness concerning these bills, it had been rare for GFAF to propose legislation or become involved in the process.

The climate in Georgia has not always been receptive to openness; we feared that if we proposed legislation, we might end up in a less transparent posture than before. We unfortunately have been in the position annually of fighting a growing number of ex-

emptions to our open records and meetings statutes. We have our hands full with the defensive posture.

Yet, given the above experiences with the attorney general, though we usually do not propose affirmative legislation, it is now more common for GFAF to schedule a visit with a legislator to talk about concerns. We have had pretty good success with our more aggressive stance. During the last legislative session, GFAF visited a legislator to ask about a particular bill, and before we took official action, that legislator pulled his bill! Others have asked us to submit proposed language, which is now part of our routine.

Another helpful trick is to marshal one's allies. Common Cause, the League of Women Voters, the Georgia Trial Lawyers Association, the Georgia Press Association and others are all often fighting the same battles. Although they usually defer to GFAF's expertise, it is always helpful to have additional signature power.

On that same theme, it's just as helpful to know one's "enemies." GFAF has relationships with the Association of County Commissioners of Georgia, and the Georgia Municipal Association among others. While ACCG and GFAF will never agree on the fact that, in GFAF's opinion, the ability to make verbal open records requests should always remain in the law, at least we periodically talk it through. Also, it's not uncommon for the 'enemy' to give a call to let us know what is coming down the pipe, because they know the legislators are going to want to hear from the other side.

Although we are frequently at the legislature, we also typically try to prepare white papers or at least bullet points for distribution to the legislature and the larger freedom of information community. When media calls for a comment on a particular bill, GFAF is often able to respond with a position paper/paragraph. Similarly, when a legislator calls with questions about a particular bill, GFAF has found it helpful to be prepared with a summary analysis to forward immediately.

We have also gotten into the habit of asking the governor to veto legislation or sign it into the law. We have had various levels of success and some surprises. Regardless of our expectation level, we always try to let the governor know our official viewpoint prior to his signature on the legislation.

Hollie Manheimer is Executive Director of the Georgia First Amendment Foundation a non-profit organization established in 1994 to educate about the open government laws in Georgia.

SPIKED!

Fighting in-house censorship when media managers can't handle the truth

BY CHARLES LEWIS, INVESTIGATIVE REPORTING WORKSHOP

One of the most aggravating occupational hazards for investigative reporters everywhere is internal censorship. Indeed, few things are more professionally debilitating than watching your story get killed or substantially gutted by some spineless suit representing the corporation's financial, political or other interests. It can lay you low for months and months.

And if it happens repeatedly, such sustained spiking can crush your spirit, scar your soul and mean it is well past time to find another employer. Or, if necessary, you might even decide to start your own news organization, as I did in 1989 after abruptly quitting my job as a producer for Mike Wallace at CBS News 60 Minutes and starting the Center for Public Integrity from my home. After years of these kinds of aggravating issues, I didn't want anyone telling me I couldn't report or publish a story. (For the precise details of why I left 60 Minutes, see "935 Lies: The Future of Truth and the Decline of America's Moral Integrity").

A CENTURY OF SPIKES

Of course, spiked stories and embittered writers are hardly new. Upton Sinclair wrote "The Brass Check" in 1919, a scathing, self-published, popular exposé of the press and its corporate coziness which sold 155,000 copies in 12 printings. Best known for "The Jungle," his 1906 political novel about the working conditions and food safety of meatpacking plants, Sinclair called "The Brass Check" "the most important and most dangerous book I have ever written."

Three decades later, after getting repeatedly spiked, veteran reporter George Seldes walked away from newspapering in the late 1930s. Interestingly, Seldes later wrote that it was "The Brass Check" and his friendship with Sinclair, "lasting many years, that influenced me and the books I wrote on the press, beginning in the 1930s." Seldes' books were entitled "Freedom of the Press" (1935) and "Lords of the Press" (1938), and in 1940 he launched a four-page weekly newsletter called *In fact*, "For the Millions Who Want a Free Press" (and later added this subtitle: "An Antidote to Falsehoods in the Daily Press"). It was America's "first successful periodical of press criticism" and had 176,000 subscribers at its peak in 1947 — higher than the combined circulation then of *The New Republic* and *The Nation*, according to communications scholar Dr. Carl Jensen.

Seldes, who also had known Lincoln Steffens and was similarly inclined to muckrake, exposed how the press, receiving millions of

dollars in tobacco advertising was, not coincidentally, "censoring" important, new scientific information showing that smoking cigarettes kills. The two leading media organizations willing to report such information: *Reader's Digest*, which then was subscription-based, without advertising, and *The Associated Press*, the not-for-profit news organization begun in 1846. A fifth of his 500 issues of *In fact* were about the tobacco companies, including media censorship about their deadly products.

The extent of news media laryngitis about the health threat posed by tobacco was extraordinary, extending for decades while television, radio and newspapers reaped hundreds of millions of dollars in advertising revenue. And when federal regulators and lawmakers were considering a cigarette advertising ban, the presidents of the three major TV networks cried like stuck pigs. At one point, at a U.S. Senate hearing, they each declared they would *not* voluntarily release the tobacco companies from their various multi-year advertising contracts. Leonard Goldenson, the president of ABC, complained that a cigarette advertising ban would be unfair, financially exorbitant and, in fact, "it could well mean a substantial cutback in our news and public affairs operations almost immediately... We do not believe that the Congress would look with favor on any such forced curtailment of network service to the American public." In other words, as *The New Yorker* writer Thomas Whiteside adroitly put it at the time, "ABC owed it to the public to keep the cigarette commercials on the tube."

Remarkably, despite the substantial tobacco and broadcasting industry pressure and sophistry, not to mention campaign contribution largesse, Congress actually managed to pass the Public Health Cigarette Smoking Act, banning all television and radio cigarette commercials starting January 1, 1971. President Richard Nixon signed it into law in 1970. And then the cigarette advertising dollars simply moved to print outlets.

In the first year the television and radio cigarette advertising ban was in effect, the tobacco industry spent \$157.6 million on newspaper and magazine advertising in the United States, up dramatically from \$64.2 million in 1970. National magazines such as *Time* and *Newsweek* "more than doubled" their cigarette ads, and *Life* magazine almost doubled theirs. Whiteside, the most prominent muckraker investigating the tobacco industry during this time, was livid over what was happening: "How can any publisher — anyone — *make money* out of selling advertisements for a product

that is known to cause death on a disastrous scale year after year?" But the coffin cash kept coming in.

PULLING PUNCHES FOR SPONSORS

In the context of noteworthy investigative reporting about the tobacco industry in the 1960s and 1970s, with the exception of Whiteside, this certainly was not print or broadcast journalism's finest moment. There were no Pulitzer Prizes, no National Magazine Awards and no Peabody Awards given for enterprising stories about the cigarette manufacturers or their various political and public relations shenanigans during this period. The news media's anemic coverage of the deadliest industry in America while simultaneously reaping billions of dollars from it is particularly ironic considering that in terms of timing, this also coincided with the historic apogee of high impact, public service journalism in America, namely the New York Times' and Washington Post's and other newspapers' publication of the Pentagon Papers in 1971 and the Watergate scandal coverage between 1972 through 1974.

But in my experience, commercial news organizations have been much more likely to pull their punches journalistically when the subject of an investigation is a major corporation or industry with massive financial might, influence and the potential for bringing costly, time-consuming libel litigation. Especially when media companies were going public between the mid-1960s to mid-1990s, with major outside investors demanding higher and higher quarterly earnings, attempting to harvest their mature investments at unrealistically high, arguably irresponsible profit margins of 20-30 percent. Especially when between 1994 and mid-2000 alone, roughly 40 percent of America's daily newspapers were sold at least once. And, by the way, is it merely a coincidence that, according to research gathered separately by journalists Felicity Barringer and Florence Graves, fewer than 10 percent of the Pulitzer Prizes awarded since they began in 1917 have been for news stories that are "primarily an investigation of corporate power?"

Meanwhile, similarly unabashed, financial avarice was rearing its ugly head within the network television corporations and their news divisions. The nadir of the broadcast media's deep reportorial reticence regarding the tobacco industry occurred between 1987 and 1996, when nervous media executives directly pressured reporters/producers on four occasions at three separate network television news programs.

In 1987, Rich Bonin and I began to report and produce a segment entitled "Tobacco on Trial" with 60 Minutes senior correspondent Mike Wallace, about the increasingly aggressive civil litigation against the cigarette companies and their hardball, expensive efforts to fight back. Wallace later told us that the president of CBS, who was also the chairman of Lorillard, a major tobacco company, had asked him over dinner not to run our tobacco story — to which Wallace told us he replied, "Go to hell."

The highly critical investigative segment revealed that the companies had hired 87 of the top law firms in the United States, made very aggressive use of private investigators and conducted punishing interrogations of plaintiffs and related witnesses for days. After Laurence Tisch, president of CBS and also chairman of Lorillard formally declined our request for an on-camera interview, our broadcast segment, which aired in January 1988, included this line: "For this broadcast no one from any of the major tobacco companies would talk to us on camera, not Philip Mor-



Members from the House Energy and Commerce Subcommittee met in 1990 to investigate financial links between the tobacco companies and television networks. Television experts, representatives of the tobacco industries and Catholic nuns testified before members of the committee.

ris or R.J. Reynolds, Brown and Williamson, Lorillard, American Brands or Liggett. Tisch declined to comment or appear." What we were doing seemed about as cheeky and insubordinate as a correspondent or producer can be within the confines of a commercial television network.

But in retrospect, of course, it proved to be only an ephemeral journalistic triumph in regard to network television news attempts to report the truth about the tobacco industry, in the face of multibillion-dollar financial interests. Between 1993 and 1996, four investigative producers at three network television news programs were either thwarted from their stories airing or later undermined and betrayed after publication, or both: Walt Bogdanich at ABC News Day One, Marty and Frank Koughan at ABC's Turning Point, and Lowell Bergman at CBS News' 60 Minutes.

After airing an investigation stating that tobacco companies "artificially spiked" cigarettes with nicotine "in order to keep people smoking," ABC settled a \$10 billion lawsuit brought by Phillip Morris and publicly apologized *without* the consent or approval of Bogdanich or correspondent John Martin. Bogdanich had been

told not to speak to the news media, despite all kinds of criticism and accusations that were appearing in the press. But “by the end of our subpoenas and depositions and everything, our lawyers had put together a summary judgment that was just devastating, asking for the lawsuit to be dismissed, backing up what we had written or reported and broadcast. And this was the moment, all my lawyers had been saying, ‘You know, Walt, be patient, it will happen. Your day will come.’”

LITIGATING CENSORSHIP

Unfortunately, it didn’t come. Walt discovered that ABC had quietly asked its lawyers to file the defense’s summary judgment motion to dismiss under seal. As Bogdanich put it, “You don’t have to be an investigative reporter at that point to know that the game has been rigged.”

On August 21, 1995, ABC settled its lawsuit with Philip Morris. ABC issued a formal apology to Philip Morris and, as part of the settlement, Diane Sawyer read it during halftime of Monday Night Football. Bogdanich and correspondent John Martin refused to sign the apology. One of the terms of the settlement was that both sides would not talk publicly. But Philip Morris ignored it, days later buying roughly 700 full-page ads with banner headlines, “Apology accepted.”

The settlement came weeks after Disney and Capital Cities/ABC had agreed to merge, the second biggest corporate takeover in U.S. history at that time worth an estimated \$19 billion, a deal that eventually netted its top executives millions of dollars.

The same day Philip Morris announced the lawsuit, ABC killed the Koughans’ commissioned, \$500,000 documentary, shot on four continents, exposing the combined U.S. government and industry efforts to export tobacco overseas and lied about why it was killed for two decades. It had been preliminarily approved, but within hours of the lawsuit announcement, after ABC News President Rooney Arledge hastily met with several internal corporate lawyers, the documentary was quietly shelved. And instead of acknowledging the real reason it would never air, ABC officials publicly impugned the quality of the documentary and by extension, the quality of the Koughans’ work.

Richard Wald, who had been a classmate at Columbia University Graduate School of Journalism with Rooney Arledge (who died in 2002), was a longtime senior vice president at ABC News and by 1994 specifically was responsible for “editorial quality” at ABC News, and now he is a professor at the Columbia Graduate School of Journalism. He told me, “At a point before the [Turning Point tobacco] program was to go on the air, the Corporate guys [sic] called Rooney Arledge, the President of the division, to say that they wanted to kill it, and he acquiesced. I think his words at the time were that they owned the football and ultimately, it was their call. He may have had reasons of his own to kill it, but I do not know them.” Another ABC executive separately confirmed his recollection.

Years later, what did four-time Emmy Award-winning documentary producer Martin Koughan have to say, when told that his very strong suspicions nearly two decades ago had been true?

He believes the pressure to successfully complete the merger with Disney contributed to the unwillingness to go after Philip Morris:

“When it becomes clear, on the corporate level that this merger was going to happen and therefore in order to make it happen, the Philip Morris lawsuit had to go away, the only way it could go away was to cut a deal with Philip Morris. So the humiliating apol-

ogy on Walt Bogdanich’s piece, and the disappearance of my hour — and the truth then became ‘Oh, there’s no news here.’ From out of the mouths of the very people who a year before said ‘this is terrific stuff.’ ... The new truth was defined by the economic realities of the corporation.”

One might get the impression from this article, that spiked reporting only happens when it is about the tobacco industry. That would be very wrong. The most egregious recent example of profiles in cowardice occurred in late 2013, when Bloomberg News spiked an important exposé about the endemic corruption that has entwined China’s financial and political elites.

In Hong Kong in March, Bloomberg chairman Peter T. Grauer revealed the company’s investigative journalism had interfered with, to quote Howard W. French in his Columbia Journalism Review article on the saga, “its true vocation: selling computerized terminals that provide financial information.”

FIGHTING INTERNAL CENSORSHIP

So what can you do, as an individual journalist, if it appears that great, exciting investigative story you’ve been quietly exploring and finally have pitched is getting yawns or worse, pushback from your editor(s)? Or maybe it was initially approved but now, later in the process, you think it might get spiked? First, figure out why this is happening — editor/owner idiosyncratic proclivities against certain subjects, for no reason; timidity because of a major advertiser or other financial considerations; a political crony or other personal friendship considerations? More broadly, inside your newsroom have you (or other reporters) been holding back on investigating certain subjects because the editors’ known aversion to them (what former San Jose Mercury News publisher Jay Harris has called “anticipatory self-restraint”)?

From all of these things, you must seriously ponder the context and circumstances of your discontent and then decide quietly how much this story matters to you. Are you really willing to quit over it? (i.e. Financially, before jumping off the diving board, is there any water in the swimming pool below? Have you considered your other employment possibilities?) Is this the first time it has happened to you there? Is there, perhaps, one notorious, misguided editor? Or is it systemic and not just happening to you, but other reporters there whom you respect? In my 60 Minutes case, this reportorial reticence and lack of spine was a serious, recurring problem for me and other investigative producers.

And if this sounds a little too similar to your own situation, in order to protect your physical and mental health, I suggest you get the hell out of there, as soon as possible! Life’s too short. Find fiercely independent media owners or nonprofit publishers and editors who respect journalism and the truth, whatever the subject is.

As a reporter, editor or publisher (or all three), follow your passion and never let the bastards get you down — whoever they are.

Editor’s Note: Portions of this article are excerpts from Lewis’ book “935 Lies: The Future of Truth and the Decline of America’s Moral Integrity.”

Charles Lewis is the author of “935 Lies: The Future of Truth and the Decline of America’s Moral Integrity.” Founder of the Center for Public Integrity and its International Consortium of Investigative Journalists, he is a professor and founding executive editor of the Investigative Reporting Workshop at the American University School of Communication in Washington.

IRE Resources

The IRE Resource Center is a major research library containing more than 26,000 investigative stories – both print and broadcast – and more than 4,200 tipsheets available at ire.org/resource-center or by contacting the Resource Center directly, 573-882-3364 or rescntr@ire.org.

TIPSHEETS

No. 4261: “Public Records and you.” USA Today’s Brad Heath and Alia L. Smith with Levine, Sullivan, Koch & Schulz, LLP cover open records basics, from FOIA to individual state open records laws to dealing with denials and expensive document fees. (2014)

No. 4236: “Building trust: Getting reluctant sources to talk.” IRE Board member Ellen Gabler, who is an editor and investigative reporter at the Milwaukee Journal Sentinel, offers tips on interviewing and what to do when a source initially refuses. Gabler advises to be persistent, but polite. (2014)

No. 4206: “Tips when negotiating for data and federal records.” This tipsheet, by AP’s Jack Gillum, covers several ways to make your negotiation for federal records and data go more smoothly: Be as specific as you can; Stay on top of your request; Push back. Find out how to avoid problems from the start, deal with delays and some additional ideas for what types of electronic records to request. (2014)

No. 4114: “Threat modeling: Security for your story.” Learn how to protect your news organization’s sources, reputation and potential legal worries from Columbia University’s Jonathan Stray.

No. 3790: “Getting to Yes.” Jennifer LaFleur gives fantastic tips on how to get what you need through a FOI request. She even gives actual examples of being told no and how to turn that into a yes. (2012)

No. 3430: “Finding and Negotiating for Data.” This tipsheet, by Danielle Cervantes details why you need a data strategy, where to find the data, and how to negotiate for it once you’ve found it. There are detailed resources and tips for all three topics. (2010)

STORIES

No. 26244: WFXT-TV (Dedham, Mass.) “High Prices Keeps Sunshine Disclosures in the Dark.” This series of reports exposed evidence of nepotism in the state hiring process in Massachusetts and unfolded into a months-long battle to obtain state hiring records in which employees disclose relatives who are already working for state government. Since 2003, people hired by the state have had to fill out something called a Sunshine Disclosure. These disclosures were intended to shine light on the people getting hired to ensure that nepotism is not taking precedence over the hiring of the most qualified person for a position. But after WFXT-TV attempted to obtain Sunshine Disclosures for the office in which they documented questionable hires, the state sent the station a bill for nearly \$70,000. WFXT-TV did manage to obtain a smaller sample of Sunshine Disclosures and discovered one in four employees hired did, in fact, already have relatives on the payroll. As a result of the station’s reporting, a state lawmaker is filing a bill to make Sunshine Disclosures more easily accessible to the public. (2013)

No. 26118: KMGH-TV (Denver, Colo.) “Contrary to Public Interest.” Colorado’s open records laws are supposed to keep government officials accountable, but acquiring documents can require paying hefty fees or becoming tangled in expensive and lengthy legal battles. In some cases, the cost and complexity of obtaining records is enough to drive citizens away. In other cases, officials use vague legal standards like “contrary to the public interest” to deny citizens access to records that may be unflattering or contain information that agencies would prefer to hide from the public’s eye. Or as KMGH-TV’s 7News found out first hand, in some instances, a state agency will sue a requester to keep records under wrap. (2013)

IRE Resources

The IRE Resource Center is a major research library containing more than 26,000 investigative stories – both print and broadcast – and more than 4,200 tipsheets available at ire.org/resource-center or by contacting the Resource Center directly, 573-882-3364 or rescntr@ire.org.

No. 25808: Santa Fe Reporter. “The Year in Closed Government.” Seven months of tough reporting, exhaustive research and dozens of public-records requests culminated in a sweeping exposé of public officials’ attempts to evade public scrutiny and undermine public-records laws under New Mexico Gov. Susana Martinez, who campaigned in 2010 on a promise to restore transparency in government. This story begins in July, with Sante Fe Reporter’s first big break on a massive trove of leaked emails that revealed the extent to which public officials were using private email to conduct state business, in an apparent attempt to hide it from the public record. Their reporting on open-government issues extends to the 2012 elections, during which we delved into the close relationships among political action committees, super PACs, campaign managers and candidates connected to Gov. Martinez. The entry ends with a December cover story that encompasses the entire series and offers unprecedented insight into the degree to which New Mexico’s public officials sought to hide important information from the public. (2012)

No. 26352: “Newton 911 Tapes.” In the face of opposition from government officials, the public and colleagues in the media, The Associated Press aggressively fought for 911 records and documents related to the 2012 massacre at Sandy Hook Elementary School. The request, begun as a routine newsgathering effort, turned into a high-profile fight for public information as state legislators tried to claw back Connecticut’s open records laws. (2013)

No. 25925: “FOIA Fight.” Against considerable resistance from police, prosecutors and the medical establishment, The Medill Justice Project, through the hard-hitting reporting of undergraduate student journalists, in 2012 took on a largely overlooked and misunderstood area of the criminal-justice system: shaken-baby syndrome. Scores of mothers, fathers, day care workers and other caregivers throughout the United States are being accused

of violently shaking children, inflicting fatal head injuries. The examination of this issue—through published investigative articles, breaking stories, fight for public records, FOIA requests and appeals and motions in federal court—has provided a deeper, nuanced understanding of this complex, controversial subject. Shaken-baby syndrome has received scant in-depth examination in the media even as emerging science divides many in the medical community. (2012)

EXTRA! EXTRA!

“Hundreds of diplomats pulled over for serious driving offenses.” Documents from the U.S. Department of State shows hundreds of diplomats have been pulled over for reckless driving, DWI and other serious offenses. NBC4 Washington spent six years fighting for the list, which it requested in 2008. Still, the records aren’t complete. Some files were withheld for “national security” reasons, according to the report. The station also found many repeat offenders, including some that were not on the State Department’s list. Reporter Tisha Thompson explains how the story came together in an article on NBC4’s website (bit.ly/1xyojXe). (2014)

IRE RADIO

“FOIA Frustrations” Kirsten B. Mitchell, a former journalist and current facilitator with The Office of Government Information Services, talks about common FOIA problems and how to fix them. Deb Nelson, Michael Ravnitzky, Charles Ornstein, and Jennifer LaFleur share tips on beating FOIA fees, arguing for data, and more.

You can find and download previous podcast episodes on iTunes or soundcloud.com/ire-nicar. Find more resources from IRE Radio at ire.org/blog/ire-radio/.

National insecurity

How two journalists tested Norway's data security

By Espen Sandli and Linn Kongsli Hillestad
Dagbladet

Imagine being able to control your neighbor's webcam, open your competitor's database or take control of industrial control systems with a few keystrokes.

In a series, the Norwegian newspaper Dagbladet revealed how easily this can be done. We, journalists Linn Kongsli Hillestad and Espen Sandli, tested everything from surveillance cameras to databases and control systems available online with little or no security whatsoever.

What we found was surprising, dangerous and often creepy. And you can do the same in your country.

The purpose of the articles wasn't to cover just the theoretical risks, as are usually discussed. We wanted to uncover the actual effects of weak data security.

We sought out systems and servers that were completely open without any protection. But the project was produced under strict ethical and legal guidelines. We never changed the settings on any of the systems we found. We didn't hack once. We didn't even enter any passwords.

The scope was shocking. We found everything from youngsters snogging to national security at risk.

We notified anyone at risk about the security gaps well before the articles were published to give them time to secure their systems. We documented some of the confrontations on video. No surprise, it makes for great television.

As a direct consequence of our reporting, companies have gone bankrupt and thousands of security issues have been solved.

Useful tools

Please note that we did not have any special skills when we started reporting. But we quickly picked up a few. "Null CTRL" was about what anyone can find with a little digging. And it is scary, worrying and sometimes a bit funny.

We have investigated 535,320 Norwegian IP addresses and 707,358 open ports in the process of reporting this story. We mainly used the publicly available search engine SHODAN, created by Swiss-American John Matherly.

The search is the most difficult part. SHODAN is not like Google. It does not give you suggestions or anticipations of what you might be looking for.



Without previous special skills, journalists Espen Sandli and Linn Kongsli Hillestad investigated Norway's security.

Search for something vague like "industrial control system," and you will probably find nothing.

SHODAN is a search engine that lets you find specific computers (routers, servers, etc.) using a variety of filters. Some have also described it as a public port scan directory or a search engine of banners.

"Null CTRL" is Dagbladet's biggest news series ever created for publishing primarily online. In addition to text, we produced videos with a special design profile for many of the news stories. We also developed and launched a unique test engine. By accessing Dagbladet's test page, the reader can immediately check the security of his or her own IP address. The test takes the IP you have, looks it up in SHODAN's database and returns with information about possible open ports SHODAN has registered on this IP.

In some cases it will also explain what might be the cause and effect of such open ports (depending of what sort of open port it found).



Dagbladet

Dagbladet reporters found sensitive documents belonging to an airport soon to be the country's main air force base.

Complicated cases like our investigation need to be made accessible; the broadest group of people should be able to understand them. We used our digital presentation resources, such as interactive graphics that explain the security troubles you might come across.

We worked full time for nine months on research and writing.

What we've uncovered:

- 2,048 surveillance cameras in homes, nightclubs, shops and restaurants, available online and accessible without any password protection.
- More than 2,500 control systems in Norway are connected to the Internet with minimal or no security.
- 500 of these control industrial or critical infrastructure.
- Thousands of databases and servers with private and sensitive information can be accessed without entering a single password.
- Open servers belonging to fire departments in 39 municipalities that contained, among other things, sensitive emergency plans and documents related to airport and factory security.
- Sensitive documents regarding a civil and military airport.
- 15 entrances to fire alarms belonging to Jernbaneverket, the Norwegian railway authority.
- Sensitive information about children in protective custody.
- We could turn off the heating in an entire block of houses.
- 290 buildings with vulnerable systems for controlling functions in schools, a military camp, homes for the elderly, and more.

Before publishing, we traveled to different parts of the country, confronting people with the information that was available online. You rarely know who owns an IP address, and it's not easy to figure

that out. Say you find online a surveillance camera in a home or even a nightclub somewhere in Norway. How do you know where it actually belongs?

The same goes for industrial control systems. It is hard to figure out the function of the system much less to find the owner. We had to do a lot of detective work in our reporting, using data resources such as GeoTracing. And we physically explored out in the field, hoping to find out more about systems and their owners (such as fire alarms for the railway network).

It's obviously uncomfortable to be told that other people may have access to your private data, sensitive company information or an industrial control system. But people generally appreciated being told. In most cases, the public availability came as a total surprise to them.

We found one interface for a surveillance camera someone had installed to film dogs outside their house. It was available on the Internet without any security. The camera had a feature so that you could pan the camera's view to where it no longer filmed outside the house but into the kitchen window. We traced the owner and told him what was going on. Needless to say, he was thankful.

Some reactions have been surprising. We found a data company with huge amounts of customer passwords all in the open. When alerted, the owner told us, "This is the end of my company, but thank you for telling me."

We even received public kudos from the government official in charge of our country's NSA, who said we made an "important contribution to increasing the security of all of us."

Risky business

Project “Null CTRL” combined tabloid storytelling with serious and technical investigative journalism. The articles provided public education through consumer-friendly articles about surveillance cameras, printers and external storage devices that are insecure in homes and small businesses.

We also published confrontational articles about larger control systems that were crucial for economic, personal and national security but were dangerously insecure.

We found a database belonging to Norway’s biggest tax company. In the 5,958 detailed entries about its customers, we found several children taken into the state’s social services system. Anyone could find these children. The database gave away their real names, aliases, the addresses of their protection homes and when and where they take taxis.

Some 80 articles have been published, and we are still revealing more cracks in data security.

Espen Sandli is an investigative reporter, now with Norwegian daily Dagbladet as a head of news. He is behind the award winning series “Null CTRL” (Zero CTRL). Sandli won The World Digital Media Award, The European Press Prize, the SKUP Award, the IT Security Award, among others. Board member of Norwegian Foundation for Investigative Journalism (SKUP) since 2013. Previous track record: FIFA scandals, ticket fixing, athletes and doping, money and power. Interests: Dark music and obscure football clubs.

Linn Kongsli Hillestad is a political scientist and news reporter with the Norwegian daily Dagbladet. She is behind the award-winning series “Null CTRL”. Hillestad won The World Digital Media Award, The European Press Prize, the SKUP Award, the IT Security Award, among others. Her former investigative projects include “Who was the Norwegian terrorist?” (after the terror attacks 22. juli 2011), pupils abused by teachers, among others.



Dagbladet

Everything from pin-codes to guests at the local tanning beds was available online at this Norwegian shopping center. The owner didn’t know anything was wrong.



Dagbladet

This is the operation room at the Norwegian NSA. Here they keep track of threats against the nation and key parts of public and private domain.



Dagbladet

A couple make out at a night club. The camera was unprotected and open to anyone, without the guests or owners knowing anything. We later found this couple, who had just met at the bar when filmed.

There are no stories in the press box



By Bill Dedman
Newsday

During the summer of 1998, I was working part time in Chicago for The New York Times and had the pleasure of covering the home run competition between Mark McGwire and Sammy Sosa. I missed the steroids angle entirely, just like nearly everyone else.

But I got a few good scraps, mostly from avoiding the press box.

It sure is convenient to sit in the press box. When a home run is hit, they announce the distance. You can keep your laptop plugged in and stay online. You can tweet and blog and keep rewriting your story so it's ready to go within five minutes after the final out. And there's food.

There's camaraderie in the press box, too. During one game we could all hear one side of a running argument between legendary Chicago Tribune columnist Jerome Holtzman on the phone with his editor back in the Tribune Tower.

Holtzman had been covering sports since 1943, when he was 16. As a young man, he'd interviewed the generation before him, turning out the classic book "No Cheering in the Press Box." I hope some young sports writer today is interviewing older sports writers for a sequel.

That day, Jerome, now 82, was arguing with some young editor back at Tribune Tower over his column. He explained politely, "Yep, I know he hit two home runs. Yep. Yep. That'll be in the story. The column is from the interview..."

And then a voice from the back of the press box shouted, "Run the column!"

As Jerome kept trying to persuade the editor, we all took up the chant, loud enough for the fans in the stands to hear: "Run the column." The chant settled in as "Run the fucking column, Run the fucking column."

Back at Tribune Tower, the editor heard our chanting and backed down about 10 seconds later. Who says there's no cheering in the press box?

But most of the time I found the press box stifling. When you're up there, you're really cut off from the fans. At a professional

sporting event or big-time college football game, reporters are able to park in a special lot, enter the stadium, go up in an elevator, cover the game, eat well and go home without talking to a single fan.

All of this distance shows up in the stories, too, where hardly any story includes actual description of anyone doing anything: Players don't slide hard into third. Players don't curse after throwing the interception. It's all play-by-play and statistics. And game "notes," are found by the team's researchers: "This is the first time a Canadian-born player got a hit on a Thursday night since the Truman administration."

And quotes, of course. Quotes are never placed lower than the third paragraph according to the universal rules of trite story editing. Getting a great quote is good reporting, but too much reporting stops at writing down what people say. At big-time sporting events, reporters don't even have to talk to the players to get those quotes. After the game, if you don't have time to go down to the locker room or the clubhouse, public information aides (with journalism degrees?) will bring you a quote sheet. Then you can take the elevator back to your car.

How was anyone in the press box going to get a story that was different from everyone else's? So I started sitting in other parts of Wrigley Field.

One game I sat with Dominican fans who were waving a flag for their man Sammy Sosa.

I crouched for a couple of innings behind the seat of a father who had driven all night and had only napped in his car because his son, with whom he had played catch for years even after dusk and suffering through knee pain, was pitching in his first major league baseball game.

I sat in the last row of the right field bleachers, where longtime Cubs fans bet on everything, including whether the ball thrown into the infield after the third out would end up on the grass or the dirt of the mound. And where they try to help out the "ball hawks" who stand out on Sheffield Avenue trying to catch home

How was anyone in the press box going to get a story that was different from everyone else's? So I started sitting in other parts of Wrigley Field.

runs: When a lefty comes up to bat, the men in the stands tap their left shoulders, signaling to the guy down on the street to position himself over to the left, closer to the foul line, to field the long foul ball when it bounces off a taxi.

And one day, having exhausted all other possibilities, I stood out in the last row of the left-field bleachers in the “family section,” the no-alcohol-no-cursing section. I figured I’d give that an inning. The man next to me, in a suit and tie, was wearing his fielder’s glove, so I asked him the obvious question: If he caught the record-setting home run ball, worth maybe a million dollars, would he sell it? Or keep it?

The man said, “I was thinking I would give it back to Sosa or McGwire, let them have the keepsake. But then,” he said, “my accountant told me that if I gave a valuable item, that’s a gift, and I’d have to pay the gift tax.” So, the man said, he’d decided to send it to Cooperstown, because gifts to a nonprofit aren’t taxed.

No way, I said.

After the game, I placed a call to Phil, the accountant who did our taxes. He said, yes, definitely, the giver pays the gift tax on gifts valued at more than \$10,000. For a baseball worth a million dollars, giving it away is a taxable event, with a gift tax of about \$150,000.

I knew The New York Times wouldn’t publish this story on Phil’s say-so. The Cubs’ next stop was against the Pirates, so I found a professor of tax law at the University of Pittsburgh. Yep, he said, that’s the law.

The Times editors said they weren’t going to be made fools of and wouldn’t publish the story unless the Internal Revenue Service confirmed it. And it did. The IRS spokesman in Washington said, “I can confirm your understanding of how the gift tax works.”

That was a page-one story, “Fan Snaring No. 62 Faces Big Tax Bite.” (nyti.ms/1tjfnID).

After members of Congress got up in arms the next day, the IRS backed down, saying that although the law is the law, they weren’t going to come after some 12-year-old fan. The IRS was decidedly pro-baseball, and the IRS men said they didn’t understand the infield fly rule either.

There are no stories in newsrooms. There are no stories in morning meetings and conference calls where editors throw around topics. As a reporter, resist being sent out to pursue story ideas that are really just topics. And if you’re ever an editor, send reporters out into the world, trusting them to find stories.

Even if your assignment is a high school graduation ceremony, or a routine trial, find the most interesting person to sit with. Look for documents that are not handed out at the meetings. Aggressively ask readers for story ideas. Get your business card into the hands of every person on your beat. Find ways to broaden your media diet.

Change your perspective.

Never sit in the press box.

Bill Dedman, senior writer at Newsday, received the IRE Award and Pulitzer Prize. He is the co-author of the No. 1 bestselling biography “Empty Mansions: The Mysterious Life of Huguette Clark and the Spending of a Great American Fortune.”

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Snapshots from our blogs

Hundreds of police killings are uncounted in federal stats

BY SHAWN SHINNEMAN

About 45 percent of killings at the hands of police officers don't show up in the FBI's stats on justifiable homicides, making it difficult to determine how many incidents happen each year, a Wall Street Journal report has found.

The Journal put data from 105 of the country's largest police agencies up against the FBI's numbers and found more than 550 police killings were missing from the national tally or, in a small number of cases, not linked to the agency involved.

According to the Journal's analysis, more than 1,800 police killings occurred within the 105 agencies from 2007 to 2012. During the same span, the FBI recorded 1,242 police killings.

For the full WSJ report, which is behind a paywall, visit on.wsj.com/1BzKrDr. To read a short Q&A, which is outside the paywall, visit on.wsj.com/12vNayH.

Audio from 2014 Watchdog Workshops now available for download

BY SARAH HUTCHINS

Couldn't make it to one of our Watchdog Workshops this year? We recorded audio from many of our panels and, thanks to a generous grant from the Ethics and Excellence in Journalism Foundation, have made it available for download online.

We have recordings from the following workshops: Jacksonville, Buffalo, Portland, Washington DC, Tucson, Wyoming, Los Angeles, Iowa City, and New York.

Get tips on covering minority communities from Los Angeles Times reporter Anh Do and MSNBC anchor Richard Lui. Listen to USA TODAY reporter Brad Heath talk about fighting for public records. And get tons of ideas for quick-hit investigations, successful web searches and effective interviews.

How to download:

- 1) Audio is only for IRE members, so make sure you're logged in.
- 2) Click on any of the workshops listed above to get to the individual event schedules, located at the bottom of the page.
- 3) Click on the session you're interested in. If we have audio*, you'll see a blue link near the top that says "Audio file: Download here."

*We don't upload sessions done by IRE trainers, although some sessions co-taught by IRE staff have been added.

Back in civilian world, military sex offenders fly under the radar

BY SHAWN SHINNEMAN

More than 240 military men and women who've been convicted of rape, child molestation and other sex offenses have disappeared from sex offender registries.

The Scripps D.C. bureau reviewed more than 1,300 military court martial cases and civilian sex offender registries across the country. The report found military sex offenders often return to civilian life, are allowed to keep their convictions quiet and end up offending again.

The story is told in two parts and was released nationally across Scripps stations. Part One, hosted by the NBC affiliate in Kansas City, is about an Army rapist living under the radar (bit.ly/138JTXe).

Part two, hosted by an ABC affiliate in Detroit, reports how sex offenders re-offend in the civilian world (bit.ly/1vQsmxT).

Scripps also put together an interactive component — a searchable database of the military sex offenders not on public registries (bit.ly/1DcwGwh).

Transparency Watch: Ferguson no-fly zone aimed at journalists

BY JACK GILLUM AND JOAN LOWY, ASSOCIATED PRESS

The no-fly zone in place during August's protests in Ferguson, Missouri, was enacted to keep the media from shooting overhead footage from helicopters, according to a report by the Associated Press.

The AP got its hands on audio recordings of conversations between the Federal Aviation Administration and local police officials. In the recordings, local authorities admit that the no-fly zone, billed as a measure to ensure the public's safety, was in fact aimed at boxing out news media.

Police have claimed the 37 square miles of space was restricted in response to shots fired at a police helicopter, but didn't provide the AP a report of the incident. (bit.ly/1pgaiMI)

Story Shorts goes behind the scenes with NBC Bay Area

BY IRE NEWS

A tip from a source prompted the NBC Bay Area team to launch a major investigation into Sysco Corporation, the world's largest food distributor.

Using a wide variety of cameras and surveillance techniques, the station exposed the company's dangerous practice of storing fresh food in unrefrigerated storage sheds. The food was then delivered to restaurants, hotels, hospitals and schools.

In our latest installment of Story Shorts reporter Vicky Nguyen and producer Kevin Nious explain how the investigation came together. They'll offer tips on working as a team, selling managers on a major project, reaching out to sources via social media and more.

Check out our Story shorts page ire.org/storyshorts/ a new series of web videos designed to help reporters and editors get the tips and tricks they need from fellow journalists who have worked on a variety of investigative stories. Want to participate in Story Shorts? Shoot us an email at storyshorts@ire.org.

Behind the Story: How NPR and ProPublica exposed problems with the Red Cross' response to Superstorm Sandy

BY SHAWN SHINNEMAN

Justin Elliott, Jesse Eisinger and Laura Sullivan turned a vague tip about the American Red Cross' inefficiency into a powerful report about the organization's failings after Hurricane Isaac and Superstorm Sandy.

The joint project between ProPublica and NPR revealed that hundreds of millions of dollars pouring in from donors in 2012 fell to organization leaders often more concerned with the appearance that they were helping than with actually providing aid. The team of reporters got the story through public records, internal emails and documents, and accounts from current and former disaster relief specialists.

The team reported the project in earnest for about five months, but the story has its earliest roots in a tip ProPublica's Eisinger received at the beginning of the year. Someone wanted him to look into where exactly the \$312 million in Sandy donations had gone. Eisinger and Elliott, also of ProPublica, soon realized just how tightly the Red Cross protected that information.

"We basically couldn't answer the question," Elliott said.

So, for the time being, that became the story. The two posted an article about how difficult it was to track donations from beginning to end. In that piece, ProPublica included a call: "If you have experience with or information about the American Red Cross, including its operations after Sandy," it read, "email justin@propublica.org."

While sources gradually came forward, ProPublica enlisted the help of NPR to launch a deeper investigation. NPR's Sullivan added another experienced reporter to the team and the public radio platform gave their story a wider audience.

The reporters sent out a score of state and federal public records requests. They sought correspondence between the Red Cross and the government agencies – New York City's Office of Emergency Management and the New Jersey Governor's Office, among others – that played a role in responding to the storms.

The team hit a snag in New York, but in some ways the problem ended up working in their favor. The team had asked for information that the attorney general's office had gathered from charities that raised money after Sandy. The office had released some of the information, including some hard numbers, in a summary format, but Elliott wanted to see all the raw data.

In response to the Freedom of Information Law request, Elliott received a letter in the mail from the Red Cross that said the agency had hired a major law firm to fight the request. The agency argued that the information Elliott sought should be exempt as a "trade secret."

"It struck us as incredibly strange because the Red Cross is not like Goldman Sachs or something," he said. "If they have a trade secret about how they better respond to disasters, seems like that shouldn't be a secret."

For the rest of the story, visit our blog at bit.ly/1qApe8X

INVESTIGATIVE REPORTERS & EDITORS, INC. is a nonprofit organization dedicated to improving the quality of investigative reporting within the field of journalism. IRE was formed in 1975 with the intent of creating a networking tool and a forum in which journalists from across the country could raise questions and exchange ideas. IRE provides educational services to reporters, editors and others interested in investigative reporting and works to maintain high professional standards.

PROGRAMS AND SERVICES:

IRE RESOURCE CENTER – A rich reserve of print and broadcast stories, tipsheets and guides to help you start and complete the best work of your career. This unique library is the starting point of any piece you're working on. You can search through abstracts of more than 25,500 investigative-reporting stories through our website.

Contact: Lauren Grandestaff, lauren@ire.org, 573-882-3364

IRE AND NICAR DATABASE LIBRARY – Administered by IRE and the National Institute for Computer-Assisted Reporting. The library has copies of many government databases, and makes them available to news organizations at or below actual cost. Analysis services are available on these databases, as is help in deciphering records you obtain yourself.

Contact: Elizabeth Lucas, liz@ire.org. To order data, call 573-884-7711.

ON-THE-ROAD TRAINING – As a top promoter of journalism education, IRE offers loads of training opportunities throughout the year. Possibilities range from national conference and regional workshops to weeklong boot camps and on-site newsroom training. Costs are on a sliding scale and fellowships are available to many of the events.

Contact: Jaimi Dowdell, jaimi@ire.org, 314-402-3281 or Megan Luther, megan@ire.org, 605-996-3967

PUBLICATIONS:

THE IRE JOURNAL – Published four times a year. Contains journalist profiles, how-to stories, reviews, investigative ideas and backgrounding tips. The Journal also provides members with the latest news on upcoming events and training opportunities from IRE and NICAR.

Contact: Megan Luther, megan@ire.org, 605-996-3967

UPLINK – An online publication by IRE and NICAR on computer-assisted reporting. Uplink stories are written after reporters have had particular success using data to investigate stories. The columns include valuable information on advanced database techniques as well as success stories written by newly trained CAR reporters.

Contact: David Herzog, dherzog@ire.org, 573-882-2127

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More details about the conference can be found at ire.org.

A wide-angle photograph of the Philadelphia skyline, featuring several prominent skyscrapers like the Comcast Center and the Liberty City Center, set against a clear blue sky. In the foreground, there is a dense line of green trees.

Can't afford to attend IRE training? Apply for a fellowship or scholarship! www.ire.org/events-and-training/fellow