How to pry data from a reluctant agency

What we'll go over:
1). Before you request
2). Crafting your request
3). Negotiating and common complaints
4). Appealing

Before you request something
- Talk to humans. Find the people that know the system. Ask someone to walk you through each step. How is something counted? Where is it recorded? Who has access? Where is it documented? Who does the training? What is the form called? Who does the coding? What is the database called?
- Is your data already online somewhere? Or available without a fight?
- Read reports and footnotes - Think what data drives specific claims-- and look for footnoted citations that point you to source material.
- Look for forms and online lookup tools - They can be annoying, but behind each of them is likely a database.
- Ask for a records layout or data dictionary to see what exists.

Crafting your request
- Maybe it's best to go to a records person, maybe the media person - ask to be expedited "in the public interest."
- Consider testing your request, or breaking it into pieces
- Think of ways to speed up your request-- redacting takes a long time-- can you exclude portions you KNOW will be redacted like Personally identifiable information?
- Preempt exemptions you know they'll consider by writing around them.
- Ask for the log or summary of whatever has been released to others (foia the foia)
- Write in clear, concise, professional language. Make sure you anticipate a judge, attorney and the public seeing your email exchanges.
- Check if your state requires electronic records to be released electronically.
- Data dictionary: Skip fields agency will claim exempt and you don't need

Most common barriers

- First-- you need to know the law-- state, federal. Some crime laws apply in states not the records law. Know your way around FERPA and HIPAA.
- PII is a hurdle-- you can always ask for "de-identified" data. Or ask them to swap in a unique identifier for names/ssn to find repeats. You might end up with a "data use agreement" through legal.
- Too big to export - think about downsizing-- or asking them ways to get creative, zip files? Dropbox links? Visiting in person?
- Not exportable - this is almost always not the case. You can always ask about software then ask that company why their product won't export data (it will).
- "We only have aggregate stats" - Those aggregates must be calculated using raw data.
- "We aren't required to create records for you" - a query of a database is NOT creating a new record. You can say: "We're not asking you to join tables for us, or conduct any type of analysis of this data whatsoever."
- Overly burdensome- this usually is "too big" or "too hard" - make sure that's part of law-- then think of ways to unburden them!
- Cost - some states charge for "programming time" - but make sure you know the limits-- and offer solutions: downsize, take a samping, offer to write the queries yourself.
- "We don't have a data dictionary" -- Find training manuals or screenshots of the app online to guess at table and field contents. Read agency's software contract; ask the software company for info. Request blank forms.

During/Negotiating

- Think of every agency that might touch this data. Most small agencies report up to larger agencies. Can you ask for it from both?
- Go up the chain. Don't be afraid to go above someone's head (respectfully). The records person is usually just following orders-- and a boss actually might have to answer to someone (voters?) and you can explain to them why a request is important.
- Think about who else might have interest in releasing info- legislators? County board? If you fail, would they be interested in seeing it internally-- and then sharing?
- Think about who else uses the data-- researchers?

- Think about peer pressure-- can you request the same information from peer counties? cities/agencies? "See, your friends in Shelbyville released it no problem."
- Document all of your interactions-- phone + email.
- Demand a determination in writing that cites case law.
- Frame your follow-ups as missing records, not questions-- you can't appeal unanswered questions: "This spreadsheet only includes 500 homicides, but you reported 650 to the FBI" as opposed to: "Why do I have records on 150 fewer homicides than you told the FBI?"
- Ask for a DETAILED cost breakdown:
  - How much is computer processing time vs. specific labor tasks?
  - How many labor hours programming vs. review for exempt material?
  - Who's doing the review, and at what hourly pay rate?
  - Who's doing the programming, and at hourly pay rate?
- Use detailed cost estimate: If the big cost is paying programmers to write queries that extract just data you need, ask them to just copy whole DB.
- If the big cost is for lawyers to review, ask which fields they must review. Date and name fields don't need individual review.
- Narrative or memo field (1,000+ characters) might be reasonable to review. Can you skip for now and ask for narrative on outliers you find in DB?
- 65,536 rows in Excel. (Or round numbers: 500). Do dates make sense? Do a quick pivot table to make sure entries you'd expect are there.

Appeals
- Know your rights, and pay special attention to the clock - FOIA is 90 days and you can't sue without an administrative appeal first.
- Data requests can be complicated: Summarize your timeline, cite case law and use PLAIN English as if writing for a normal audience.
- Stick to the agency's basis for your denial, describe in detail what you want and why it doesn't fit the exemption.
- Research other AG opinions in addition to case law
- Consider writing about your denial and appeal effort
- Use sample appeals letters (I have some, Muckrock, FOIAProject have others)
- Get in touch with legal - Ed Larkin, elarkin2@gannett.com , (917) 373-0042. Tom Curley, tcurley@gannett.com, (301) 807-3696.

Sample language:

Under XX records law, I am requesting raw data -- ==in a machine-readable database or spreadsheet format such as Excel, CSV, Access, SQL or XML== - pertaining to XXX from the DATE.

This data should include all fields in the DATABASE that contain ==non-exempt information==, including but not limited to:
-give some examples of what you expect.

Please note, I am seeking all non-exempt information in this database. I am asking for the release of ==segregable data==-- in other words, fields containing non-exempt information stripped of exempt information.

Another sample h/t Stucka:

I request these records be provided in an ==electronic format that can be imported into standard database software==. Examples of such formats include an Excel .xls or .xlsx file, an Access .mdb or .accdb file, a text-based delimited file such as .csv or tab-delimited .txt, a .dbf file or an SQL dump readable by standard open-source database software. (A PDF file would not comply with this request because PDF files are not readable by database software.) ==If this information is stored in a relational database, I request it be provided in its original relational format, not "flattened" or de-normalized.==

Sample appeal:

Re: FOIA APPEAL: Appeal of Denial of Request ==No. 820-2021-002752==

Dear OLC-FOIA staff:

I am filing this appeal on behalf of USA TODAY in connection with Freedom of Information Act Request 820-2021-002752 to the Equal Employment Opportunity Commission. ==This is an appeal of the agency's denial of that request pursuant to 5 U.S.C. § 552.==

By correspondence through the agency's FOIA portal dated April 8, 2021 (and acknowledged that same date) USA TODAY sought the following records:

==NAME THE RECORDS==

==EXPLAIN DENIAL AND TIMELINE==

The denial errs for the reasons discussed in more detail below. Accordingly, USA TODAY requests that the responsive documents and/or data be released in full or with all reasonably segregable non-exempt portions unredacted.

==ARGUMENT: Explain why exemptions don't apply.==

In sum, Exemption 5 does not permit the withholding of responsive statistical records, and therefore should be released.

I look forward to your prompt reply within 20 days of this appeal, and in any event by June 11, 2021. See 5 U.S.C. § 552(a)(6)(A)(ii).

SIG BLOCK WITH YOUR CONTACTS.

Other resources + guides
- IRE Tipsheets - search FOIA, data requests etc.
- RCFP - https://www.rcfp.org/guidesarchive/
- FOIA Project - http://foiaproject.org/
- Muckrock - muckrock.com
- Judicial Watch - https://www.judicialwatch.org/documents/categories/foia-request/
- American Oversight - https://www.americanoversight.org/documents
- NICAR-L if you hit trouble
- My go-to experts: Ellen Gabler, Annie Waldman, Steven Rich, Sarah Ryley