

Chapter XVI

Government Stewardship of Online Information: FOIA Requirements and Other Considerations

G. Scott Erickson
Ithaca College, USA

ABSTRACT

This chapter focuses on the specific issue of the federal Freedom of Information Act and associated state and local freedom of information laws. While full of good intentions regarding openness in government, the statutes have increasingly been applied to circumstances when individuals or organizations seek government records for legal or business purposes. As such, confidential business information and private personal information are both vulnerable when data are in government hands. Given the maze of exemptions and agency interpretations regarding freedom of information requests, the circumstances are both highly variable and unpredictable. Better understanding of the statutes and their interpretations will help individuals and organizations make better decisions regarding data interactions with various levels of government.

INTRODUCTION

In an age with ever increasing amounts of personal data held in commercial and government databases, many individuals view the government

as the champion of their personal right to privacy. While this is true to some extent, it is also true that various levels of government are great generators, collectors, and suppliers of personal data. Some is published as a matter of course, some is sold.

But a substantial amount of information flows out of the federal, state, and local governments every day as a result of freedom of information requests. Indeed, it is quite possible that information you did not even realize the government holds is being turned over to a private concern right now, whether the government agency involved really wants to do so or not.

In this chapter, we will look at general trends in data collection and processing and how they relate to statute, execution, and court precedent concerning the federal Freedom of Information Act and related state laws. We will cover the laws in some detail, including common exemptions from requests and changes in the law over time. Agency practices related to the act and key court decisions will also be covered.

With that background, we will consider the status and vulnerability of confidential business information passed on to governments. Because such information increasingly includes personal details about individuals (chiefly customers), government-held business information impacts our privacy discussion. We will then move on to consider the status and vulnerability of government databases concerning individual citizens.

The main point of the chapter is that matters remain in flux in this area. Government openness is fairly well-defined but privacy rights are not entirely clear, especially related to freedom of information requests. Regardless of which way the balance tips (openness vs. privacy), more certainty will help government, organizations, and individuals better plan how and when to share their own information resources.

BACKGROUND

Freedom of Information

The Freedom of Information Act (FOIA) (Apfelroth, 2006; Uhl, 2003; Halstuk & Davis, 2002; Perritt, 1998; Perritt, 1995) was enacted in the U.S.

in 1966 with the aim of opening up government to more public review, thus increasing accountability. The federal law applies to U.S. executive agencies (not judicial or legislative bodies), while all 50 states and the District of Columbia have also enacted freedom of information laws (FOIL), generally in line with the FOIA, covering their state and local government agencies. We will discuss these separately, where appropriate.

The FOIA requires governmental agencies to proactively disclose or publish records as a matter of course. It also requires them to answer requests for disclosure of other, unpublished records. The law applies only to existing records (agencies do not need to create new ones to respond to a request) and requests can be made by any individual or group, theoretically without explaining why they want or need the records. There are nine exemptions in the act that agencies can use, but are not required to use, to deny an FOIA request. These exemptions cover requests for information relating to:

- National security or foreign policy
- Internal personnel policies and practices
- Personal privacy when exempted by law
- Trade secrets or other confidential business information
- Deliberative privilege
- Personnel or medical files
- Law enforcement
- Financial institution assessments
- Geological and geophysical information and data

A tenth exemption was added concerning critical infrastructure in the wake of 9/11 (Uhl, 2003).

One of the key things the FOIA did was change the presumption in terms of turning over information. Where requesters previously had to make the case in terms of needing the records, the burden shifted to the agencies with the passage of this act. The government entities were expected

14 more pages are available in the full version of this document, which may be purchased using the "Add to Cart" button on the publisher's webpage: www.igi-global.com/chapter/government-stewardship-online-information/27743

Related Content

Is Brand Loyalty Really Present in the Children's Market?: A Comparative Study from Indonesia, Portugal, and Brazil

(2017). *Analyzing Children's Consumption Behavior: Ethics, Methodologies, and Future Considerations* (pp. 69-102).

www.irma-international.org/chapter/is-brand-loyalty-really-present-in-the-childrens-market/164554

Codeswitching: An Alternative Approach to Traditional Communication Methods for Reaching Multilinguals in the Global Marketplace

Melissa M. Bishop and Mark Peterson (2015). *Analyzing the Cultural Diversity of Consumers in the Global Marketplace* (pp. 276-298).

www.irma-international.org/chapter/codeswitching/130873

Evaluating the Effectiveness of Loyalty Programs in the Retail Sector: The Lebanese Case

Simona Abdo, Demetris Vrontis, Sam El Nemar and Jihan Arraj (2020). *Handbook of Research on Contemporary Consumerism* (pp. 285-303).

www.irma-international.org/chapter/evaluating-the-effectiveness-of-loyalty-programs-in-the-retail-sector/238547

Web Design and E-Commerce

Xiaoni Zhang and Margaret Myers (2005). *Web Systems Design and Online Consumer Behavior* (pp. 205-221).

www.irma-international.org/chapter/web-design-commerce/31249

Impact of Supply Chain Digitalisation on a Connected Global Market

Farooq Habib and Murtaza Farooq Khan (2020). *Handbook of Research on Innovations in Technology and Marketing for the Connected Consumer* (pp. 186-204).

www.irma-international.org/chapter/impact-of-supply-chain-digitalisation-on-a-connected-global-market/239502