

Tale of two requesters: How public records law experiences differ by requester types

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Abstract

The journalism industry was central to the materialization of U.S. freedom of information (FOI) laws, yet journalists frequently voice dissatisfaction with the state of FOI laws. The study surveyed 330 public records requesters on their experiences with FOI laws, finding public-interest requesters (journalists, academics, nonprofits, and private individuals) reported a significantly different experience, including a lower likelihood of receiving records, than for-profit requesters (commercial requesters and lawyers). For-profit requesters were less likely to believe FOI laws positively impact government accountability or improve society. The findings suggest reassessing whom the laws serve and whether they meet their original democratic objectives.

Keywords

Freedom of information, access to government information, freedom of information act, access attitudes, commercial, public interest

In the United States, there is a broad consensus confirming the requisite nature of access to government information in maintaining a democracy. The U.S. Freedom of Information Act (FOIA) has been deemed “a structural necessity in a real democracy” (*NARA v. Favish*, 2004: p. 172). The U.S. Supreme Court explained freedom of information (FOI) laws as “a mechanism by which those who ultimately hold sovereign power (i.e., the

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citizens...) may obtain an accounting from the public officials to whom they delegate the exercise of that power” (McBurney v. Young, 2013: p. 228).

The press plays a pivotal role in the realization of FOI’s accountability objectives and relies on government records to gather information as a proxy for the people. Public records comprise nearly a fifth of the sources in newspaper news stories (Marquand, 2002), and 90% of stories submitted to the Investigative Reporters and Editors contest cite the usage of public records (Lanosga and Martin, 2017). For every US dollar spent on public-records based journalism, society derives \$287 in benefits through more efficient government and saved lives (Hamilton, 2016). However, journalists report extensive barriers in acquiring public records, citing delays, excessive redactions, and high copy fees (Cuillier, 2017; Diffenderffer and Retzer, 2011). At the same time, increased information controls exerted by public information officers (Carlson & Cuillier, 2017) and unconstitutional gag rules on government employees (LoMonte, 2019) have made access to public records even more important for journalists. In addition, the crumbling economic model for legacy media (Pew, 2022) has resulted in a smaller, more strained press, and news organizations are less likely to sue for public records (John and Knight Foundation, 2016).

Despite the laws originally being designed for (and in consultation with) news media, commercial entities reap many of the benefits. Pozen (2017) suggested the FOIA fits hand-in-glove with commercial interests, and in many ways commercial requesters enjoy a privileged position in the FOIA scheme. Pozen called it “corporate capture,” where rather than acting as an accountability mechanism, FOIA “funnels government resources toward private industry, creates opportunities for informational arbitrage, increases companies’ leverage over agencies in litigation and negotiation, and compromises the Act’s participatory character” (p. 1117).

Likewise, research indicates that the FOIA is predominantly used by commercial interests, who have the means to get the information they need, while increasing delays for citizens, journalists, researchers, and civil society groups that seek to use information in the public interest (Coalition of Journalists for Open Government, 2006; Kwoka, 2016, 2021; Silver, 2016). And this appears to be no accident, scholars have documented corporate interests have been working for decades to shape FOI laws in their favor (Relly and Schwalbe, 2016).

The study examines how the roles and motives of requesters influence the experiences of those who submit public records requests. First, the study explores the theoretical role of FOI laws in maintaining an informed public. Then, the manuscript recounts the journalism industry’s unique role in establishing FOI laws in the United States. The study contributes to the field by analyzing a unique dataset of 330 survey responses from an array of FOI requesters in the United States. The manuscript concludes by providing recommendations to help level the playing field for journalists and other public-interest-focused requesters. Throughout, the authors apply the term “FOI laws” broadly, including the federal Freedom of Information Act and the states’ individual public record laws, which are all unique in their finer details, but as mechanisms have a great deal of similarity and share the same objectives.

Literature review

Democratic theory

Contemporary democratic theory operates under a premise that the public will vote their will, and that the franchise is the primary democratic right of the civilian. Underlying this is the two-part assumption that governments will act with some degree of transparency and the public will avail themselves of the knowledge afforded by the transparency. While the constitutional essence of federal accountability is the opportunity to elect their representatives and their replacements, “democracy does not just happen by giving people the right to vote” (Kwoka, 2021: p. 15). The underlying two-part assumption must be fulfilled.

Meiklejohn (1948) proposed the townhall meeting as a metaphor for democratic debate and decision-making, observing, “The final aim of the meeting is the voting of wise decisions” (p. 25). Meiklejohn’s theory of the First Amendment, however, suggested that voting alone was insufficient. He explained, “The voters, therefore, must be made as wise as possible. The welfare of the community requires that those who decide issues shall understand them. They must know what they are voting about” (p. 25).

BeVier (1980) wondered about the intermediary step between access to government information and an informed public, concluding the press had historically fulfilled this role: “And it is surely a fact that the press has played a crucial, indeed indispensable, role throughout our history in informing us about our government’s deeds and misdeeds” (p. 482). Blasi (1977) also believed in the necessity of the press as an arbiter and font of information. To counter government authority, the public required “well-organized, well-financed, professional critics to serve as a counterforce to government—critics capable of acquiring enough information to pass judgement on the actions of government, and also capable of disseminating their information and judgements to the general publics” (p. 541).

Journalists and FOI law

The world’s first FOI law was passed by Sweden in 1766 (Ortenhed and Wennberg, 2017). It was no accident that the “principle of publicity” was a provision of the country’s new (and radical for its time) Freedom of the Press Act. The law’s catalyst, Anders Chydenius, was influenced by John Milton’s conception of speech, censorship, and the path to truth. He sought the fullest range of ideas possible to ensure a “competition of pens” (Manninen, 2006: p. 44). He believed freedom of the press was untenable without a guaranteed right of access. A failure to secure such a right to government information was an act of political censorship.

Nearly two centuries later, the U.S. right to know movement found the press essential to the realization of the first contemporary FOI law. Scholars (Blanchard, 1972; Kennedy, 1978) have documented the unusually close relationship between journalism organizations and congressional efforts in producing the FOIA. The symbiotic relationship between Rep. John Moss’s congressional subcommittee and journalism organizations was

indispensable to FOIA's materialization (Lemov, 2011). Journalism associations raised alarm after a significant post-World War II uptick in government secrecy (Schudson, 2015). Many press members believed wartime secrecy had bled into peaceful times. Justifications used to keep military and intelligence information private were being applied by mayors and city council members to block government access to local reporters (Cross, 1953). Moss's subcommittee "served the interests and used the methods of both politicians and journalists. The entire tone of the subcommittee's investigations into government secrecy was established by consultation with press leaders" (Foerstel, 1999: p. 22). The subcommittee's staff, comprised largely of former journalists, "collected information by investigation, interview and research, then reported the results in clear language, just as they had done while writing for newspapers" (Archibald, 1993: p. 727). The intertwining of Moss's subcommittee and the collective interests of the press was so complete that Rep. Clare Hoffman, a member of the subcommittee, complained of journalism's influence: "Perhaps the Subcommittee could be more effective in dealing with the real issue if its able counsel was provided with legal assistants instead of being surrounded by publicity men" (Blanchard, 1972: p. 277). Hoffman also complained of first reading committee reports in his morning newspaper (Blanchard, 1966: p. 18).

Unsurprisingly, a legal right long associated with journalists and, in the United States, designed by journalists, affords special consideration to journalists (Felle, 2016). Whether removing barriers by minimizing fees, opening otherwise off-limit records, or ensuring representation in oversight, the general objective is to motivate requesting in the public interest, and many laws explicitly identify the press as an agent of the public in realizing transparency and accountability.

The federal FOIA provides special fee status to journalists (along with scholarly and scientific requesters) to incentivize public-interest requests. Among subnational FOI laws, there is an even wider range of rights and privileges afforded to journalists. In reviewing the 51 statutes, as well as other state FOI guidance and handbooks, 28 of the 51 FOI statutes expressly provide preferred status or additional rights to the press. States incentivize press use of FOI through various provisions; the most popular being additional access rights. At least 24 states reserve special access for journalists to specific categories of records, such as accident reports, information on public employees, crime data, coroner's reports, elections information, and more. Two of these states—Kentucky and Virginia—only process requests of state citizens but extend access to non-state news media members. At least 15 state FOI laws detail special fee considerations for journalists. Some of these merely note that despite the profit motives of many news outlets, they are not to be treated as commercial entities, which commonly receive the heaviest cost burden of requester groups. But the majority of these fee considerations mimic the federal FOIA in acknowledging the press to be a special class of requester, frequently serving the public interest, and to be given reduced or waived fees as a method for encouraging press use of the laws. Another six states expressly establish news media representation on state FOI advisory or oversight boards. This designated representation suggests news media play a valued role in the operations of FOI laws and are able to provide necessary insight into the needs and failures of the laws.

Other users of FOI laws

Despite the intentions of the framers of FOI laws, there is a substantial and growing body of research documenting minimal use by the press. In the largest survey of federal FOIA logs, Kwoka (2021) analyzed approximately 600,000 federal FOIA requests (or about 73% of all 2016 federal FOIA requests). Kwoka's analysis estimated only 2.6% of requesters were submitted by news media. Galka (2016), in his review of 229,000 requests across 85 agencies, found news media to account for 7.6% of federal requests. In 2006, a U.S. nonprofit organization reviewed a month's worth of FOIA logs from 17 of the federal government's largest processors of requests to find that only 5.8% of requests were submitted by news media (Coalition of Journalists for Open Government, 2006). Silver (2016) concluded "the news media represent only a tiny fraction of the law's users" (p. 506). Much less is known about state and local requests, though Fink (2018) reviewed the 2014 FOI logs of 21 state environmental agencies, and she found only 1.1% of the requests were submitted by the press. In a survey of 287 access professionals, many of them state- or local-affiliated, Kimball (2012) asked records custodians who they fielded requests from. They estimated approximately 20% of requests processed were from journalists. It bears noting that these low percentages precede the layoffs newsrooms have experienced in recent years.

If news media are not submitting requests, the question becomes, who is? The answer largely depends on how researchers categorized requesters. Galka found more than half were commercially motivated—39.0% by businesses and 17.7% by lawyers. The Coalition of Journalists for Open Government found 60.8% were commercial. Fink's review of Pennsylvania requests showed 79.5% of requests to be commercial. Kwoka developed different categories, including first-person requesters (i.e., individuals who submit FOIA requests seeking their own government files or lawyers doing so on their behalf). She found a staggering 67.1% of federal requests to be first-person requests. She estimated commercial requesters to account for just 8.0% of all federal requests. Of the remainders, Galka found private citizens to submit more than one-fifth of the requests, 20.1%; nonprofit requesters accounting for 7.5%; while academics submitted 4.5% of requesters (and 4.8% were deemed uncategorized). The Coalition of Journalists for Open Government classified 32.8% of requesters as other and 3.0% as nonprofit.

There are different ways to analyze the identity of requesters, but no matter the approach, it is evident that journalists make up a small portion, while a conservative appraisal suggests commercially interested requesters likely account for at least half of requests. Government information aids the nation's economy, providing tangible benefits for corporations and investors to use public records (Gargano et al., 2017). This has led to the development of a lucrative information industry geared toward using the public records process, such as FOIAengine, which gleans request logs and sells that information to hedge funds, law firms, trade associations, and political organizations (FOIAengine, 2024). However, the growth of information brokers as a cottage industry has added stress to FOI systems and further delayed responses, frustrating government agencies, public-interest users, and the private sector. Whether that frustration is distributed equally across requester types has yet to be examined.

FOI behaviors and experiences

There were early signs that the FOIA was not serving public interests as intended nor providing equal access. [Giannella \(1971\)](#), [Relyea \(1977\)](#), and [O’Hanlon \(1984\)](#) all observed the FOIA to favor requesters with time, resources, and expertise. Commercial requesters, in particular, were determined to have a marked advantage in acquiring government records. [Nader \(1970\)](#) also identified the favoritism inherent in FOI processes, documenting “a two-pronged information policy—one toward citizens and one toward the special interest groups that form the agency’s regulated constituency. For the latter, a pattern has emerged over the years of preferential access and treatment” (pp. 2-3).

The study seeks to determine whether certain requesters experience the laws differently. Previous research suggests that commercially motivated requesters outnumber other requesters by a considerable margin. What is not known is the motivations, experience, and resources of the requester groups. As the first known scholarship examining various types of requesters’ attitudes and experiences, the study considers research questions rather than hypotheses:

RQ1: How do commercially motivated requesters compare to publicly interested requesters in their FOI *satisfaction*, including successful receipt of sought records and overall satisfaction?

RQ2: How do commercially motivated requesters compare to publicly interested requesters in their FOI use and *behavior*?

RQ3: How do commercially motivated requesters compare to publicly interested requesters in *problems encountered* in the FOI process?

Further, the study explores requesters’ attitudes toward the importance of FOI on society. [Wagner \(2023\)](#) proposed FOI efficacy as a noteworthy consideration in FOI perceptions and opinions. As a variation of [Gil De Zuniga et al.’s \(2017\)](#) “government efficacy” variable, which focused not on political outcomes and participation (e.g., likelihood of voting, participation in campaigns) but on perceptions of whether the government worked fairly and equitably and in accordance with the will of the citizens, FOI efficacy seeks not to understand support for FOI laws—which is generally universal—but whether the public perceives FOI laws to play a distinguishable role in realizing a more accountable government and produce positive social outcomes in everyday life. In his nationally representative study, [Wagner \(2023\)](#) found both higher educational achievement and liberal political ideology to be strong positive predictors of higher FOI efficacy. Existing research suggests there are relationships between government transparency and government efficacy, as well as ties between psychographic variables and support for transparency ([Cicatiello et al., 2018](#); [Cuillier and Pinkleton, 2011](#)). The study seeks to determine whether requester type predicts a relationship with FOI efficacy.

RQ4: How do commercially motivated requesters compare to publicly interested requesters in *FOI efficacy*?

Method

To answer the research questions, the authors employed an online survey of 330 public records requesters throughout the United States.

Sample

The sample was compiled across three collection waves, each using a different tool for recruitment. The first wave employed MuckRock, a popular nonprofit FOI request service which has aided requesters in more than 120,000 public records requests since 2010. MuckRock provided the authors with the names and contact information of 707 individuals who had submitted a request using the service and registered for their newsletter. MuckRock's users are primarily journalists and private parties. The individuals were initially contacted on October 25, 2021, with a brief solicitation email, a survey link, and a \$5 Amazon gift card code (which recipients were encouraged to redeem whether they completed the survey or not). Three follow-up emails of similar format followed with the stage closing on November 19, 2021. The effort produced 113 completed surveys (16.0% completion rate); 61 respondents redeemed the incentive (8.6% redemption rate). Of those responding, a majority were journalists and private citizens and only a small percentage were lawyers or commercial requesters (see [Table 1](#)). As a result, a second survey was conducting using a broader recruitment method.

The second survey wave used listservs and social media outreach. A brief introduction and a link to the survey were sent to listservs where FOI discussion is common, including

Table 1. Requester type by survey wave ($N = 330$).

Requester Type	MuckRock	Listservs	FOI Logs	Total
	($n = 113$) (%)	($n = 109$) (%)	($n = 108$) (%)	($N = 330$) (%)
Public interest				
Journalist	42	24	19	28
Private citizen	33	27	10	23
Nonprofit	6	19	11	12
Academic	4	10	8	8
Subtotal	85	80	48	71
For-profit				
Lawyer	4	12	22	13
Commercial	1	3	19	8
Subtotal	5	15	41	21
Other	10	6	10	8

those maintained by the American Bar Association, Investigative Reporters & Editors, the National Freedom of Information Coalition, the Free Expression Legal Network, and the Media Law Resource Center. The survey was circulated via authors' Twitter and LinkedIn accounts. The convenience sample began on November 29, 2021, and closed on December 17, 2021. No incentive was offered in this stage, and the effort produced 109 completed surveys. The convenience sample produced a more evenly distributed collection of respondents across requester categories (see [Table 1](#)).

A third recruitment effort employed a randomized stratified sample drawn from actual FOI logs (i.e., registers from government entities tracking and reporting processed requests). FOI logs included the name of the requester, the date of the request, requester contact information, among other relevant categories. The U.S. Census Bureau's Census of Governments was used to randomly select 50 municipalities/townships and 50 counties. A FOI request was submitted to each seeking a FOI log (for May 1, 2022, to December 31, 2022). FOI requests for FOI logs (for August 1, 2022, to October 31, 2022) were submitted to both the primary education and transportation departments in all 50 states. The FOIA logs (for October 2022) of the 64 federal agencies that processed more than 50 requests in 2020 were also sought. Some agencies post logs on their government FOIA page or on FOIAonline, and 25 logs were collected in this manner. FOIA requests were submitted to the remaining 39 agencies seeking their logs. A sample of 501 requesters was drawn from the collected FOI logs. Most local and state logs included email contact information of requesters, but not so for federal agencies. When email addresses were not provided in the logs, the authors, with help from a graduate student, searched online for emails. A brief solicitation email on June 10, 2022, included a link to the survey and a \$5 Amazon gift card code (which recipients were encouraged to redeem whether they completed the survey or not). Six follow-up emails were sent, and the survey was closed on July 20, 2022. The effort produced 108 completed surveys (21.6% response rate). This sample provided much broader representation of the FOI requester community (see [Table 1](#)).

Combined, the three samples provide an opportunity to compare attitudes and experiences by requester type—public-interest vs. commercial—regardless of individual differences among state public record laws, the different agencies responding, or the types of records requested. Certainly, some interactions might be present (e.g., more dissatisfaction among public-interest requesters in certain states or in acquiring records from certain agencies), but this initial study seeks to examine differences between requester types generally.

An anonymous 53-item online survey was provided to all respondents. The survey was hosted by Qualtrics, and all items focused on FOI behaviors, experiences, and opinions, as well as requester identity and demographic questions. All demographic questions were optional and when appropriate respondents were provided with a N/A option. The first question provided a brief definition of a public records request, ensuring the respondent understood the study was interested in federal, state, and local requests, before asking whether the respondent had ever submitted a public records request. Negative answers skipped the respondent to the end of the survey, and no data was collected.

Independent (predictor) variables

The survey included a question asking how the respondent would categorize their primary identity as a requester. Options were: commercial or business, journalist, lawyer, nonprofit organization, academic, private citizen or “average person,” along with an “other” option and a textbox. The independent variable categories were guided by the fee category definitions of the federal FOIA statute, which outline three requester categories according to motivations and purposes in submitting requests: “commercial use,” “educational or noncommercial scientific...scholarly or scientific research” or a “representative of the news media,” and a catch-all other category for those requesters not fit for the first two categories. The study then defined two primary requesting categories as guided by the FOIA approach. Due to the wide disparity of “other” responses and the lack of a coherent identity in these responses, for analysis the other option was coded system missing (7% of the 330 responses).

For-profit requesters. Those that identified as commercial requesters or lawyers were recoded as for-profit requesters. Commercial requesters and lawyers share similar motivations and are more likely to have significant resources in their pursuit of requests.

Public-interest requesters. The second requester type or category is public-interest requesters, and respondents who identified as journalists, academics, private citizens, or affiliated with a nonprofit were recoded together in the category.

There is ambiguity in reducing the requester categories to a for-profit-public-interest binary. Requester roles are not always neatly defined and can sometimes be fluid (e.g., Lawyers can work for non-profits or the press. Private citizens can seek records solely for their own benefit). However, the authors believe there to be a distinguishable contrast in resources, motivations, and expertise among for-profit requesters and public-interest requesters. The authors were guided by the FOIA statute, but also used the binary as commercial requesters and lawyers typically submit requests as part of their profession, and ultimately for profit, even if on behalf of citizens or journalists. This introduces a resource advantage, in both time and money. The other requester professions may work for profit-generating organizations, but in most instances their ultimate objectives are not solely financial. Commercial requesters and lawyers commonly have a narrow focus on specific records or record sets that breed familiarity with agencies and records systems, as well a legal proficiency that comes from routinization of a task. [Table 2](#) documents the demographics of each requester category.

Dependent (criterion) variables

FOI satisfaction. A series of questions focused on requester satisfaction regarding different elements of the FOI request process. Each of the three satisfaction questions provided respondents with a unipolar five-point Likert scale: terrible, poor, okay, good, and excellent. Responses were coded as ordinal, 1-5.

Table 2. Requester type demographics.

	For Profit (<i>n</i> = 69)	Public Interest (<i>n</i> = 240)	Other (<i>n</i> = 21)	All (<i>N</i> = 330)
	% (<i>n</i>)			
Gender (<i>n</i> = 321)				
Male	59.7 (40)	63.7 (149)	50.0 (10)	62.0 (199)
Female	38.8 (26)	32.1 (75)	45.0 (9)	34.3 (110)
Non-binary	1.5 (1)	4.3 (10)	5.0 (1)	3.7 (12)
Age (<i>n</i> = 321)				
0 – 34	17.9 (12)	28.6 (67)	10.0 (2)	25.2 (81)
35 – 54	53.7 (36)	44.0 (103)	35.0 (7)	45.5 (146)
55 – 74	28.4 (19)	26.1 (61)	55.0 (11)	28.3 (91)
75 and over	0.0 (0)	1.3 (3)	0.0 (0)	0.9 (3)
Ethnicity (<i>n</i> = 320)				
Hispanic origin	6.1 (4)	5.1 (12)	10.0 (2)	5.6 (18)
Not hispanic	93.9 (62)	94.9 (222)	90.0 (18)	94.4 (302)
Race (<i>n</i> = 338)				
White	91.2 (62)	86.3 (215)	81.0 (17)	87.0 (294)
Black	1.5 (1)	2.8 (7)	9.5 (2)	3.0 (10)
American indian	1.5 (1)	1.2 (3)	0.0 (0)	1.2 (4)
Asian	1.5 (1)	3.6 (9)	0.0 (0)	3.0 (10)
Pacific islander	0.0 (0)	0.8 (2)	0.0 (0)	0.1 (2)
Other	4.4 (3)	5.2 (13)	9.5 (2)	5.3 (18)
Income (<i>n</i> = 312)				
Less than \$60k	9.5 (6)	23.1 (53)	20.0 (4)	20.2 (63)
\$60k - \$125k	39.7 (25)	38.9 (89)	55.0 (11)	40.1 (125)
More than \$125k	50.8 (32)	38.0 (87)	25.0 (5)	39.7 (124)
Education (<i>n</i> = 318)				
Less than HS degree	0.0 (0)	0.9 (2)	0.0 (0)	0.6 (2)
High school degree	10.9 (7)	11.1 (26)	10.0 (2)	11.0 (35)
Bachelor's degree	29.7 (19)	37.2 (87)	25.0 (5)	34.9 (111)
Graduate degree	59.4 (38)	50.9 (119)	65.0 (13)	53.5 (170)
Political ideology (<i>n</i> = 314)				
Conservative	31.3 (20)	7.0 (16)	25.0 (5)	13.1 (41)
Liberal	51.6 (33)	63.0 (145)	55.0 (11)	60.2 (189)
Neither	17.2 (11)	30.0 (69)	20.0 (4)	26.8 (84)

Notes: The *n* for each requester category represents all respondents who identified with the category. All demographic questions were optional and thus the subcategories might not equal the requester category *n*. The % symbol represents percentage within the requester category. Respondents were given the option of choosing multiple race categories.

Overall satisfaction, website satisfaction, and communication satisfaction. Respondents were asked about FOI website satisfaction (e.g., whether the agency website provided useful FOI information, such as contact information or a custodian's name), communication satisfaction (e.g., communication was prompt, questions were answered), and overall satisfaction with FOI request experience(s).

Rudeness and communication format satisfaction. Two questions asked how frequently the requester experienced rudeness during the FOI process and how frequently agencies required an undesired communication format (e.g., insisting on fax when email was preferred) with answer options along a unipolar five-point Likert scale: never, rarely, sometimes, often, and very frequently. Responses were coded as ordinal, 1-5.

Success. Respondents were asked how frequently they successfully receive the records they requested: never, sometimes, about half the time, most of the time, and every time. Answers were coded as ordinal, 1-5.

FOI behavior

Request frequency. To address the second research question on FOI behavior, respondents were asked, on average, how frequently they submitted a public records request. The five answer options were: one request a year or less, every 6 months or so, about one request per month, about one request per week, and multiple requests per week. Answers were coded ordinally, 1-5.

Appeal & lawsuit. Two separate questions asked respondents how frequently they appeal unsatisfactory FOI responses and how frequently they file lawsuits challenging unsatisfactory FOI outcomes. The five answer options ranged from never to very frequently and were coded ordinally, 1-5.

FOI efficacy

To answer the fourth research question, two questions asked respondents for their perception of FOI's ability to meet its objectives. The first question asked about the magnitude of the impact of FOI laws on the operations of the government. The second question asked about the magnitude of the positive impact of FOI laws on the respondent's everyday life. The six answer options were: no impact, a very weak impact, a small impact, a moderate impact, a reasonably large impact, and a very large impact. The scale summed two questions, each with the six-answer options, resulting in a 12-point ordinal scale. The scale had a reasonably high level of internal consistency with a Cronbach's alpha of .736.

FOI problems

To answer the third research question, regarding problems different requester types encounter, two matrices were used to query respondents on common problems or issues in FOI laws not meeting expectations. One matrix focused on seven frequent concerns in the

FOI process. In both matrices, a unipolar five-point Likert scale was provided as answer options, ranging from not a problem to extreme problem (and included a N/A option). The responses were coded ordinally, 1-5.

Process. The first matrix posed a range of recurring FOI process problems: Glomar (i.e., “We can neither confirm nor deny the existence of the requested records...”), Third-Party Possession (“Records held by third-parties, private contractors or other non-government entities”), Delay, No Responsive Records (“Government offices and departments providing ‘no responsive records’ responses”), Excessive Fees, Record Format (“Obstacles to receiving records in your preferred file format”), and Accessing Metadata. These topics were taken from various studies that have highlighted requester complaints (e.g., Cuillier, 2017; Koningsor, 2021; Pozen, 2017; Stewart and Davis, 2016).

Exemptions. The second matrix offered a range of common legal exemption and non-disclosure justifications. The exemptions included: Law Enforcement, Privacy, Statutory Exemption (or catch-all exemptions), National Security (or intelligence), Deliberative Process, and Trade Secrets (or corporate information).

Results

A binomial logistic regression was performed to determine the effects of 10 different FOI requester characteristics (i.e., behaviors, experiences, and opinions) on the likelihood of the requester being either a for-profit requester or a public-interest requester (as defined in the methods section). The logistic regression model was statistically significant, $\chi^2(10) = 46.574, p < .001$. The model explained 21.4% (Nagelkerke R^2) of the variance in requester type and correctly classified 78.3% of cases. Of the predictors, four were statistically significant: success, appeal, lawsuit, and FOI efficacy (see Table 3). For-profit requesters were associated with higher likelihood of successful receipt of records, as well as an increased likelihood of filing a lawsuit. For-profit requesters were associated with lower FOI efficacy scores. Public-interest requesters were associated with a higher likelihood of filing an appeal.

A binomial logistic regression was conducted to ascertain the effects of 13 different common FOI problems on the likelihood of the requester being either a for-profit requester or a public-interest requester. The logistic regression model was statistically significant, $\chi^2(13) = 66.836, p < .001$. The model explained 29.7% (Nagelkerke R^2) of the variance in requester type and correctly classified 79.0% of cases. Five predictors were statistically significant (see Table 4).

RQ1 asked how FOI *satisfaction* compared between the two requester types. Results indicate that commercially motivated requesters experience more success in acquiring records. While a lack of significance was found among the satisfaction variables, successfully receiving the records is the primary purpose of the FOI process, and thus important in determining positive experiences.

RQ2 asked how FOI *behaviors* differed between the two requester types. The two requester categories reported distinctly different behaviors. Among these different FOI

Table 3. Binary logistic regression of satisfaction, behavior, and efficacy by requester type.

Variable	B	Wald	Exp(β)
Satisfaction			
Overall satisfaction	.072	.085	1.075
Website satisfaction	-.039	.035	.962
Communication	.286	1.830	1.331
Agency rudeness	.158	.785	1.171
Communication format	.349	3.415	1.418
Success	.491	5.855*	1.633
Behavior			
Request frequency	.140	1.325	1.150
Appeal	-.315	4.286*	.730
Lawsuit	.419	7.336*	1.520
FOIA Efficacy			
FOI efficacy	-.246	13.312***	.782
Nagelkerke R^2	.214		
Cox & Snell R^2	.140		

Notes: B = unstandardized beta coefficient, Exp(β) = exponential of beta coefficient, odds ratio. For-profit requesters were coded as "2" and public-interest requesters were coded "1."

* $p < .05$, ** $p < .01$, *** $p < .001$.

Table 4. Binary logistic regression of problems experienced by requester type.

Variable	B	Wald	Exp(β)
Process			
Glomar	-.270	2.591	.763
Third-party block	.031	.035	1.032
Delay	-.214	1.870	.808
No Responsive records	-.278	3.213	.757
Excessive fees	-.154	1.128	.857
Record format	.485	6.812**	1.624
Accessing metadata	.045	.061	1.046
Exemptions			
Law enforcement	-.254	2.245	.776
Privacy	.478	7.615**	1.612
Statutory exemptions	-.346	4.405*	.708
National security	-.447	5.794*	.640
Deliberative process	.333	3.201	1.395
Trade secrets	-.403	6.263*	.669
Nagelkerke R^2	.297		
Cox & Snell R^2	.195		

Notes: B = unstandardized beta coefficient, Exp(β) = exponential of beta coefficient, odds ratio. For-profit requesters were coded as "2" and public-interest requesters were coded "1."

* $p < .05$, ** $p < .01$, *** $p < .001$.

behaviors, analysis showed for-profit requesters to have a significantly higher likelihood of filing a lawsuit, while public interest requesters had a significantly higher likelihood of filing an appeal (see [Table 3](#)).

RQ3 asked how *problems* differed between the two requester types. [Table 4](#) documents significant differences in problems experienced. The quantity of these disparities among problems and issues in the FOI processes and exemptions suggests different requester types navigate the process distinctly. For-profit requesters were associated with a higher likelihood of finding privacy exemptions to be severe problem and were associated with a higher likelihood of finding obstacles to receiving a preferred file format to be a problem. Public-interest requesters were associated with higher likelihood of finding three different exemptions—1) national security or intelligence, 2) trade secrets or commercial information, and 3) the statutory or catch-all—to be a more severe problem.

RQ4 asked whether for-profit requesters and public-interest requesters perceive *FOI efficacy* differently, and the answer is a resounding “yes.” One of the strongest statistical findings of the study was the significant negative correlation between for-profit requesters and the FOI efficacy variable—the belief that FOI laws positively impact government and individuals’ everyday lives. Simply, those seeking public records in the public interest, not just for profits, are more fervent in their belief that FOI matters in a democracy.

Discussion

This study documents a stark difference in FOI experiences and opinions between for-profit requesters—operationalized in this study as commercial requesters and lawyers—and public-interest requesters—journalists, private citizens, academics, and nonprofits. For-profit requesters experience more success in receiving their sought records, yet indicated considerably lower belief that FOI laws improved government operations or had secondary effects that benefit society. Analysis also revealed numerous discrepancies in the issues the different groups found to be major problems in FOI meeting its objectives. Lastly, for-profit requesters showed a significant positive correlation with filing lawsuits, whereas public-interest requesters correlated with higher odds of filing an appeal.

The findings are at once expected and alarming. On the one hand, it is logical to find seasoned, professional, profit-oriented FOI requesters reaping the benefits of FOI systems. They submit requests frequently, and they are more likely to understand the nuances of the FOI process. They are less likely to submit requests seeking records of uncertain existence. They are less likely to submit requests that may be embarrassing or incriminating to government officials, as journalists and curious civilians are wont to do. They might be immigration lawyers seeking files for their clients or information resellers making routine requests for monthly reports. They have the means and staffing to navigate the process, and the ability to cover the expenses that come with acquiring records.

These requesters are not to be blamed—government information has economic value, and this is a residual benefit from the free flow of information. There are, however, unintended consequences to the preponderance of commercial requesters. For-profit uses burden custodians, crowd out public-interest requesters, and fundamentally alter the way requests are processed. Those who use public records for societal good—to inform the

electorate of problems in their communities—are most passionate about government transparency. They are also the ones most disadvantaged, and most shunted, by the system that was specifically created to inform the public and foster democracy.

There is no panacea but there are several solutions that might ease the strain of FOI offices while affording more attention to meeting the original objectives of FOI laws, better serving public-interest parties in strengthening democracy:

1. Improve the process for everyone. There are a range of technological solutions that could improve processes, including refashioning aging records management systems to capitalize on digital advances, such as the use of AI in retrieving and redacting documents, which has shown promise in early Department of State pilot projects (Heckman, 2023) and academic studies (Baron et al., 2022). Governments should be more proactive in identifying and releasing records of common interest. Kwoka (2021) recommended removing first-person records from the FOI process to aid private individuals seeking records for their own purposes, and easing the system burden overall. This applies to immigration records required by those seeking asylum, which account for an incredible volume of federal requests. Identifying and affirmatively publishing commonly sought record categories (e.g., contracts, inspections, complaints, etc.) and record types (e.g., records that memorialize agency activity, original government collected or maintained datasets, etc.) would drive down the routine requests of many lawyers and commercial requesters, allowing for more resources to be committed to other requests.

2. Implement alternative dispute resolution mechanisms outside of litigation. This study indicates that journalists, private individuals, scholars, and nonprofit requesters are more likely than for-profit requesters to appeal denials rather than sue. People’s access to information should not be disadvantaged simply because the legal system favors the affluent and litigious. Governments should explore non-litigation enforcement of public records laws, as outlined in 2022 by the Federal FOIA Advisory Committee (OGIS 2.0, 2022). The report emphasizes the importance of oversight offices being given authority to review records *in camera* and make binding decisions. Connecticut’s Freedom of Information Commission has served citizens and journalists for decades, and Ohio established a court of claims dedicated to resolving FOI complaints at little cost to requesters. The Pennsylvania Office of Public Records resolves most disputes between requesters and agencies within 30 days, with binding authority, cheaply, and without the need for attorneys. Mexico and many other nations have established independent agencies to assist requesters in getting records for free or little cost, also with binding authority, assisting average people and others without means.

3. Provide greater deference to public-interest requests in court adjudication. The study found public-interest requesters have more trouble with national security and trade secret exemptions—areas where deference to agency justifications has been shown to be a problem (Johnson, 2023; Kwoka, 2014; Mart and Ginsberg, 2014). A method used by some states gives weight to the opinions of a state ombuds or independent oversight committee. Another is increased use of outside experts and other

authorities in determining the veracity of agency nondisclosure claims. Perhaps FOI rights should be interpreted by the courts similar to speech rights, with different levels of scrutiny for access. Requests of a public-interest nature (e.g., political speech) should have a greater likelihood of release than commercial requests (commercial speech), particularly in weighing competing interests, such as personal privacy rights.

4. Ensure equity in the requesting process for public-interest requesters. Justice John Paul Stevens once observed, “[T]he FOIA’s central purpose is to ensure the Government’s activities be opened to the sharp eye of public scrutiny” (Department of Justice v. RCFP, 1989: p. 774). In pinpointing the objective of the law, the Supreme Court expressly identified the intended class of requesters and sought to limit requesters whose “interest falls outside the ambit of the public interest that the FOIA was enacted to serve” (p. 775). Many of the for-profit requests monopolizing contemporary FOI mechanisms would fail to meet the Court’s standard of keeping citizens informed of what their government is up to. Future research should explore policies and statutory amendments that would improve processes specifically for public-interest requesters. Exploring and growing special privileges for public-interest requests, like those addressed above for journalists, may prove fruitful. However, it must be noted that any measures should undergo rigorous testing and refinement to avoid additional delays, bureaucracy, and unintended frustrations for requesters and agencies. Any remedies must achieve their objectives without narrowing the scope of access or punishing some requester types.

5. Provide assistance and training for public-interest requesters. Local journalists and average people often don’t have the time or resources to pursue public records as effectively as for-profit requesters, and yet their requests often provide a direct contribution to society. This merits public assistance. Government agencies should be required (and satisfactorily funded) to provide assistance for public-interest requesters in helping hone their requests, at least for those requesting such aid. Also, the public should be educated on their rights to information, much like parts of Mexico require schools teach students how to acquire public records. Public libraries, with the proper trained staff, could serve as hubs for aiding citizens and local journalists in information acquisition, as well as in training local government employees.

Limitations and future research

This exploratory study is limited by the composition of the survey sample. The authors conducted data collection using three different methods in an effort to ensure a faithful representation of the general requesting community. Yet, taken as a whole, the sample is demonstrably different than the demographics of the U.S. population (see Table 1). There is domestic (Wagner, 2022) and international (New Zealand Office of the Ombudsman, 2021) evidence suggesting the sample is a reasonably accurate representation of the requesting community. Future research should continue examining the demographics of the requester community.

Also, as addressed above, the study is limited by an inelegant divide between for-profit and public-interest requester types. The study undersampled commercial requesters, and

future scholarship should examine more closely the experiences and motivations of for-profit requesters, perhaps through interviews and other qualitative methods.

Conclusion

Modern FOI laws in the United States were created to pierce the veil of government secrecy and be a tool of government accountability. Journalists were expected to play a central role in accessing the information and transmitting it to the public. But the realization of FOI laws—federal, state, and local—have strayed dramatically from their original intentions. And despite the press's close collaboration in realizing U.S. FOI laws and the special privileges afforded the industry by many of the laws, journalists are infrequent, largely unsatisfied requesters.

For decades, scholars (Giannella, 1971; Nader, 1970; O'Hanlon, 1984; Relyea, 1977) have warned of a system that favors those with economic and social advantages. The study documents in detail how these advantages materialize in the present FOI processes. FOI laws are not expected to solve broader social issues regarding advantages and favoritism, but the laws should not exacerbate inequalities. The resource issues have plagued FOI processes since its contemporary realization. A clear structural deficiency has gone unaddressed for half a century. FOI laws must work for the public, not only for those with abundant resources and legal expertise. For-profit requesters are not to be held responsible for the current unsatisfactory state of the laws, but measures must be taken to return a public interest law to its intended beneficiaries.

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