



CATHOLIC LEGAL IMMIGRATION NETWORK, INC.

Open Records Process: Effective Strategies for Community Organizers to Boost Immigration Advocacy

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Workshop Goals

- Knowledge of the Open Records Process and how to request public records
- Why you and why now?
- Strategies to use open records requests and documents to advance advocacy priorities
- Case studies
- Resource guide



Why Now?

- Federal immigration agenda has taken hold at state and local levels. For example,
 - 287(g) program expansion
 - Anti-Sanctuary Policies
 - E-Verify mandates
- State and local resources are being diverted towards advancing federal priorities
 - Without gov’t transparency
 - To the detriment of your community needs



Why You?

- Last line of defense to protect your neighbors and community resources
 - Reverse anti-immigrant policies and infrastructure
 - Ensure gov’t accountability
- Shape the future of your locality through policies that:
 - Prioritize public safety
 - Ensure equal access to opportunities for all
 - Promote immigrant integration



Methelus v. School Board of Collier County, Florida

- In 2013, nearly **200 immigrant students** and English language learners who were 16 years or older were denied admission to Collier County Public Schools.
- Through the open records process, the SPLC obtained the School Board’s enrollment policy.
- **Policy:** Lowered the max. age a student could enroll in high school, if officials thought the student would not graduate within two years.



Methelus v. School Board of Collier County, Florida Cont'd.

- Under the policy, students were placed in adult learning programs.
- SPLC sued the school board for denying equal access to educational opportunities for immigrant youth **and won!**
- The School Board allowed those who were denied enrollment to appeal the decision.



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TEACHING, INTERPRETING, AND CHANGING LAW SINCE 1979

A graphic of a colorful, multi-colored dome of a capitol building. The dome is divided into vertical sections of red, yellow, green, and blue. The words "LIES" and "LONG" are written across the dome in a stylized font.

Preparing for a PRA* Request

*Also called: "Public Records Act" "Open Records Act" "Sunshine Law" "Public Information Act" etc.



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Outline

- Four Steps for Planning a Records Request
- Comparing PRA v FOIA
- What partners might be helpful in obtaining or publicizing my results?
- Planning for surprises
- How will I use my results?

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4 Step Framework for Planning a Records Request

1. What information do I want?
2. What kinds of documents and records would have that information?
3. What agency or agencies hold the relevant documents?
4. What is the best way to get those records?

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1. What Information Do I Want?

For example:

- Handling of immigrant children in school placement
- Involvement of the county sheriff's department in detaining immigrants
- Access to local medical services for individuals with limited English proficiency
- Treatment of immigrant children in the juvenile court system
- Number of immigrants arrested by local police
- Backstory on how state legislators launched an anti-immigrant law

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2. What kinds of documents should I look for?

It can help to identify the types of records or documents you think will have the information you seek, whether or not you specify them in the request.

Common examples might be:

- **Financial records** – budgets, expenditures, audits
- **Internal policies and protocols** – guidance or internal policies from different bodies or agencies
- **Data collected** – aggregate information about the work of a public entity
- **Contracts or Agreements** – many kinds of contracts can show different relationships
- **Meeting notes or agendas** – beyond PRA laws, local ordinances may require transparency about meetings involving elected officials

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3. What agency holds these records?

Different agencies keep different records.

You must ask the right agency for the records you seek, or else you may get no results.

- Local vs statewide information
- Information about the activities of elected officials
- Bureaucratic records resulting from administration of local functions

Of course, you can file requests with multiple agencies.

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Example

Sasha is part of a coalition working to fight mass incarceration. To develop its advocacy strategy, the group is trying to determine what contracts the local jail may have with the federal government, including ICE.

Sasha drafts a detailed request about communications and contracts with the federal government related to detaining people at the jail. When it comes to addressing the letter, Sasha realizes that he had been operating under the assumption that the request would go to the police department. But in fact, some online research and discussion with others in the coalition shows Sasha that the main jail is run by the county Sheriff, and that there is a second detention facility managed by the county executive. Furthermore, the police department has a large hold room which the coalition believes may also be used by ICE.

Sasha revises the draft into three requests: one to the sheriff's department, one to the office of the county executive, and one to the police department.

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4. What is the best way to get these records?

Before you file a PRA request, consider other ways of getting the information you want:

- Google / other research
- Call the agency and ask for the document or records
- Ask a local elected official to get the document or information for you
- Work with a journalist who is investigating the issue
- File a federal FOIA request

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Example

Olga has heard that her county sheriff may have joined the 287(g) program and she is concerned.

Before filing a PRA request to the Sheriff's Department for any 287(g) contracts, Olga does some online research and finds ICE's webpage that lists existing 287(g) agreements: www.ice.gov/287g. The page shows that her county does in fact have a 287(g) agreement, and a link to a signed copy of it is included.

Olga wants to know what led to this agreement, but cannot find any news articles or other information. She contacts her county commissioner, but learns that he was also unaware of the 287(g) program until her inquiry. Olga asks the commissioner to dig into the matter under his authority on the county council.

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Comparing PRA and FOIA

PRA Request

- Only certain local or state functions will have immigration-related documents
- Local or state agencies may not have immigration or citizenship status information
- Usually much faster and easier than federal FOIA
- Benefit of local access and relationships

FOIA Request

- Immigration records are mostly federal – visas, status, immigration history, enforcement
- Can take a very long time
- More likely to require litigation to get a response – especially from ICE, CBP, or State Dept.

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Potential Partners

- **Allied organizations** – partnering with other organizations may strengthen your request or increase the likelihood of a timely response
- **Legal support** – you do not need to be a lawyer to file these requests or to appeal them, but it can help to line up legal support in advance just in case
- **Media** – you may especially want to work with media once you have the records, but publicizing the filing of your request can be an important advocacy strategy

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Planning for Surprises

- Information you don't expect
- Delays
- Incomplete response
- Agency doesn't understand your request
- No one has been tracking the information you want
- Unusual formats of records – e.g. audio recordings
- ICE fighting the release of records – 8 USC 236.6

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How will I use the results?

- Advocacy
- Improvement of services
- Litigation
- Research and analysis
- Education

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Timeline

1. Send your request in a way that you have **proof it was received** by the agency – like Fed Ex, and/or asking for email acknowledgement.
2. **Each state will have its own timeline** for how soon an agency, by law, must respond. It is important to look this up before sending your request. It could be one week, or one month.
3. **Keep a log of all interactions you have with each agency!** It will be very useful later on if your request is denied, especially if you decide to go to court.



Timeline

1. **When the agency responds**, it should tell you whether it is “denying” or “granting” your request. Sometimes they will grant parts of your request and deny other parts.
2. **If they grant your request**, often they will give you an estimate of when you will receive records. If they are charging **fees** for making copies and processing of documents, they may first send you an invoice before producing the documents to you.
3. **If they deny your request, don’t give up! You can appeal any denial of your request.**

Denials and Appeals

- If your request is denied, most state open records laws require that an agency must provide a reason(s) for doing so.
- **Often, the open records law in your state will have a list of reasons that a state can deny or “exempt” information you requested.** This could be for reasons such as “law enforcement investigation” or “deliberative process.” It is good to review these exemptions beforehand if you are able.
- **Different states will have different processes and timelines** for how to **appeal** the denial of a request.

CLAUDIA VALENZUELA
FOIA ATTORNEY, AMERICAN IMMIGRATION COUNCIL

RECEIVING THE RECORDS

TRACKING RECORDS

- Create a good organizing system for requesting and receiving records:
 - Electronic folders, clearly labelled (e.g.)
 - Keep a final copy your request - mark it clearly
 - If you file request by email or electronically: save confirmation that agency received request
 - If by certified mail, scan a copy of receipt but keep original in paper file as well
 - Save any correspondence by the agency
 - If you receive documents in separate productions, track the date received and save productions in individuals files (Excel)

TRACKING RECORDS

- Be sure to review agency correspondence closely. This will inform you of important matters, such as
 - Whether the agency will invoke an extension of the deadline to reply to your request
 - Whether the agency will grant or deny your fee waiver
 - Whether the agency requests that you narrow your request
 - Whether the agency is closing your request
 - Appeal timelines



REVIEWING RECORDS

- Review records as soon as possible after you receive them
- If you have filed your open records request with partners, i.e. “co-requesters,” it’s a good idea that any partnership agreement includes clarity on who is responsible for reviewing documents and timelines for review
 - Consider uploading documents to a shared access platform, such as *GoogleDocs* or *DocuCloud*. These platforms can also help showcase documents. But - safeguard confidentiality concerns.
- Be careful with data!



MISSING RECORDS OR REDACTIONS?

- Review records closely
- Are any records missing?
 - Are there other records or information publicly available that suggest records that you did not receive exist?
 - ✓ News articles referencing a governmental agreement, e.g. Hamed Aleaziz, “The Trump Administration is Scrambling to Make its ‘Safe Third Country’ Asylum Deal with Guatemala a Reality, Memo Shows,” BUZZFEED NEWS (July 30, 2019)
 - ✓ Citation to Congressional record? e.g. *The Public’s Right to Know: FOIA at the Department of Homeland Security*, House, 116th Cong. (2019) (Testimony of James Holzer).
- Are records redacted?



DEALING WITH MISSING RECORDS/REDACTIONS

- State open records or “FOIA” officers can be helpful in dealing with requests for records, including missing records (or a lack of response by the state agency)
- Consider working with these officers to facilitate a records request
- Be mindful of final responses and appeal deadlines however!
- Ultimately, only recourse maybe be filing a lawsuit in state court (particularly when it comes to law enforcement-related records or redactions)



GOING TO COURT

- Important to have request timeline clear and well-documented (i.e. when it was filed, deadlines, your efforts, any responses by the agency)
- Ensure you have exhausted all requirements under state law (including appeals when required)
- State court procedures vary: consider partnering with a *pro bono* attorney
- Litigation can be prolonged



SHARING INFORMATION

- When partnering with others on an open records request, consider creating a **Memorandum of Understanding (MOU)** that includes (among other terms):
 - **Goal** of the request for information
 - All **partner roles and responsibilities**
 - **How and when to share documents** beyond partnership (e.g. lawyers working on a lawsuit; the media)
 - **Potential vision/plan for sharing the documents publicly** (e.g. posting documents on a website or other public forum; media, written publication)



Resource: Open Records Guide for Immigration Advocates



www.cliniclegal.org/resources/state-and-local



Questions



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