

January 29, 2020

#### **Presenters**

- Christy Williams, CLINIC
- Lena Graber, Immigrant Legal Resource Center
- Ian Head, Center for Constitutional Rights
- Claudia Valenzuela, American Immigration Council
- Raul Pinto, North Carolina Justice Center



### **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

## ZZ CLINIC

## 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.

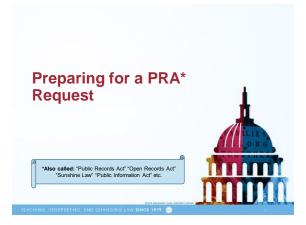
Z	$\square$	С	L	Ī	Ν	Ī	С

## 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.







Outline	
<ul> <li>Four Steps for Planning a Records Request</li> </ul>	-
<ul> <li>Comparing PRA v FOIA</li> <li>What partners might be helpful in</li> </ul>	
<ul><li>obtaining or publicizing my results?</li><li>Planning for surprises</li></ul>	
> How will I use my results?	
ACHING, INTERPRETING, AND CHANGING LAW SINCE 1979 (a)	0
4 Step Framework for Planning	
a Records Request	
What information do I want?     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?	
11	
EAR-MARCHING, INTERPRETING, AND CHANGING LAW SINCE 1979	
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 antiimmigrant law

2.	What	kinds	of	documents
sh	ould I	look t	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.

TEACHING, INTERPRETING, AND CHANGING LAW SINCE 1979

and the second

## 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.

EACHING, INTERPRETING, AND CHANGING LAW SINCE 1979

and the same



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.

EACHING INTERPRETING, AND CHANGING LAW SINCE 1979

.....

## 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

EACHING, INTERPRETING, AND CHANGING LAW SINCE 1979

.....

## 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: <a href="https://www.ice.gov/287g">www.ice.gov/287g</a>. 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.

TEACHING, INTERPRETING, AND CHANGING LAW SINCE 1979

All the second of the second

## **Comparing PRA and FOIA**

#### PRA Request

- Only certain local or state functions will have immigrationrelated 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.

ACHING, INTERPRETING, AND CHANGING LAW SINCE 1979

#### **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

EACHING, INTERPRETING, AND CHANGING LAW SINCE 1979 (III)

or services.

### **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

EACHING, INTERPRETING, AND CHANGING LAW SINCE 1979

All the second of the second

#### How will I use the results?

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

EACHING INTERPRETING AND CHANGING LAW SINCE 1979

.....

lan H	ead			
Senior Legal Worker and				
Records F				
Center for Consti	tutional Rights			
				_
	4 - 1			
Overview	of the			
Onen Dese	مام	_		
Open Reco	oras			
Process				
Piocess				
How does one request	public records			
	<b>P</b>			
A "public record" can be all sorts of di	fferent things:			
• Emails	Spreadsheets and databases			
<ul><li>Memos</li><li>Letters</li></ul>	• Contracts			
<ul> <li>Video or audio recordings</li> </ul>				
Be creative in what you ask for!				
Every state's open records law has diff public records request, which might h	ave different names, like "PIA" or			
"FOIL" or "ORR" – but the process will of this section I will list some resource	generally be similar. At the end			

	es one reauest i	public recor	d
--	------------------	--------------	---

- A request for public records is basically a letter asking a state agency to send you documents that you believe it may have in its possession.
- You can request records from almost any state agency. For example, you could ask for records from the Chicago Police Department, or the Orange County School Board in California.
- There may be a few places you cannot request information from however.

State of New Jersey
Open Palie Records Act Request
Records Canadian
P O. Box 80:
Trenum, N. 108:
RE: Open Records Request
Deer Records Canadian
Deer Recor

#### Key things to include in your request

A brief description of what types of records you're looking for. For example: "Any communications, such as emails and/or letters, between the Denver Police Department and ICE or DHS regarding the department's new detainer policy."



If there are **recent news articles or events** that can show an agency should have the records you're after, you can include links and references. For example:

"See the article Police Department Issues New Detainer Policy in the Denver Post, January 1, 2020, where Chief Joe Smith is quoted discussing the new detainer policy."

#### Key things to include in your request

- ✓ Ask for a "fee waiver" this means asking not to pay for the documents you receive, or pay a discounted rate. In your ask, you can include a brief description of who you or your organization are, to help show that you intend to use the records you receive for the public interest.
- ✓ It can be helpful to reiterate the date by which an agency must respond under your state's open records law, and also ask for the agency to provide reasons if they decide to deny your request.
- ✓ Include your contact information for the agency to write back with any questions and to send any records to.

-	me	- 12	
	m	311	no
		511	HE

- 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.



-			•	
11	m	ρI	ш	P

- 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.
- 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.

Denials and Appeals	
Demail and Appeals	
There are generally a few ways you can appeal a denial.	
<ol> <li>You can argue that the reasons (or lack of reasons) an agency gave in their denial are not part of the "exemptions" listed in</li> </ol>	
your state's law that allow an agency to deny or redact information.	
<ol><li>You can argue that the agency's reasoning for denying the records is incorrect, and provide evidence showing why you think so.</li></ol>	
<ol><li>You can argue that the agency did not search for records in the correct office or place or person(s).</li></ol>	
What's next?	
There will be a timeframe set by your state's open records law in which the agency that	
hears open records appeals will respond to your appeal.  • If your appeal is denied, you can then choose to	
file a lawsuit to try and obtain records.  • You can also do public and media advocacy to	
add pressure.  • You can also try and negotiate with an agency.	
Where to find info about your state's open records' laws and procedures	
Reporters Committee for Freedom of the Press - https://www.rcfp.org/open-government-guide/      National Freedom of Information Coalition -	
https://www.nfoic.org/organizations/state-foi-resources  Google! It is always good to do a few searches to make sure the local	
Google: It is always good to do a few searches to make sure the local law hasn't changed, find other resources or just to get the correct address or email to send your request to.	
a <b>š</b>	
Q. Broogs Seach. In Feeling Linkly	

CLAUDIA VALENZUELA	
FOIA ATTORNEY, AMERICAN IMMIGRATION COUNCIL	
RECEIVING THE RECORDS	
RECEIVING THE RECORDS	
TRACKING RECORDS	
<ul> <li>Create a good organizing system for requesting and receiving records:</li> </ul>	
<ul> <li>Electronic folders, clearly labelled (e.g.)</li> </ul>	
<ul> <li>Keep a final copy your request - mark it clearly</li> <li>If you file request by email or electronically:</li> </ul>	
save confirmation that agency received request  If by certified mail, scan a copy of receipt but	
keep original in paper file as well	
<ul><li>Save any correspondence by the agency</li><li>If you receive documents in separate</li></ul>	
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)

Hk.	
1,000	
-	

### **GOING TO COURT**

- Important to have request timeline clear and welldocumented (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)

-	

### **EXECUTING THE PLAN**

- Media? (press release, press call, reporter coverage)Posting documents publicly?
- - https://www.americanimmigrationcouncil.org/sites/default/files/foia\_documents/board\_of\_immigration\_appeals\_interpretation\_of\_stay\_of\_removal\_foia\_production.pdf
- Assist litigation efforts?
  - https://www.nationalimmigrationproject.org/PDFs/practitioners/our\_lit/foia\_dhs\_return/2014\_23Jun\_morawetz-declar.pdf
- Report or publication?
  - https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2017-03/NIJC\$20Transparency%20and\$20Human%20Rights%20Proje ct%20August%202015%20Report%20FINAL3.pdf
- Advocacy campaign...

**RAUL PINTO Senior Staff Attorney North Carolina Justice Center** 

#### NC CASE STUDY:

Police checkpoint target minority neighborhoods

- Identifying problem: Checkpoint in immigrant communities
- Identifying possible solution:

  - Litigation?Community advocacy?Media exposure?
- Defining the scope of the information needed
  - Prior to sending request While request is pending
- Getting and working with the information

Ī			
_			
_			
-			
_			
_			
_			
_			
_			
_			
_			
_			
_			
_			
_			
_			
_			

#### NC CASE STUDY -

In Winston-Salem, we:

- 1. Reports checkpoints outside mobile home parks.
- Goal: Ameliorate the condition by applying community pressure; litigate if necessary.
- 3. Worked with police's attorney on response.
- 4. Presented the information to



#### NC CASE STUDY: Obstacles we hit

- Efficiency
- Costs
- Patience required: Custodian of public records...shall, as promptly as possible, furnish copies. N.C.G.S. § 132-6. "I ain't got 'em."

  WLOS News 13
  51.7K subscribers

Jackson County is putting a new email system in place after the sheriff's emails went missing. News organizations requested copies following the ACLUS allegations that Sheriff smissing. News organizations requested copies following the ACLUS allegations that Sheriff short short of the County and the county a store years they couldn't comply because the sheriff routinely defined this emails thinking the county a keep shockups. He eaps are wrecard beeping system in owin place, contracting with Coopie to keep incoming and outgoing emails for up to 10 years at a cost of 31 thousand olders a year. County Attorney, and County Attorney and County Attorney and County Attorney of the law. The Judges Output Short Shor

#### NC CASE STUDY: Accomplishments



# Resource: Open Records Guide for Immigration Advocates



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



## Questions



Catholic Legal Immigration Network, Inc.

National Office
8757 Georgia Avenue, Suite 850
Silver Spring, MD 20910
Main Phone: (301) 565-4800
Main Fax: (301) 565-4824

cliniclegal.org
fb.com/cliniclegal