



# Best Practices: Public Records Requests



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## Public Records Requests

The Freedom of Information Act (FOIA) and state public records laws ensure transparency and disclosure of certain government records. Election officials provide many records in response to public records requests. Transparency is a key component of every election, and election officials take this responsibility seriously.

Since the 2020 election cycle, election officials have reported an increase in public records requests, requiring time and resources added to their official duties of administering elections. Flooding elections offices with public records requests may impact key service delivery during critical periods of an election cycle when staff time and resources are already stretched thin. Election officials should not allow public records requests to impact the administration of state and local elections and should consider dedicating a key staff member to handle responses to public records requests. This document highlights best practices and innovative methods jurisdictions have used to respond to public records requests.



This document provides general information and best practices for election officials regarding public records requests. The information provided is not intended to constitute legal advice. All information is provided for general information purposes only. Jurisdictions are reminded to review all applicable federal, state, and local laws and regulations before implementing these voluntary practices. Election officials should contact their state or local legal representatives with questions about the legality of specific requests or procedures in their jurisdictions.

### Freedom of Information Act (FOIA) and State Public Records Laws

While the federal government is subject to FOIA, each state has its own unique sets of laws and regulations that govern which records are subject to disclosure, the method to request information, and the rules that government agencies must follow once a request for information is received in that state.

State public records laws are sometimes referred to as open record, sunshine, or FOIA laws. Although often referred to as FOIA laws, the Freedom of Information Act does not apply to records in the custody of state or local government. However, many state-level public records statutes are modeled after FOIA.<sup>1</sup>

For more information about FOIA, election officials can review [FOIA.gov](https://www.foia.gov), which serves as the federal government's comprehensive website for all information about FOIA, including resources for the public to understand FOIA and to provide answers to frequently asked questions. In addition, the United States Department of Justice provides guidance and answers to frequently asked questions about the FOIA process on its website: <https://www.justice.gov/usao/resources/making-foia-request/foia-frequently-asked-questions>.

<sup>1</sup> See: <https://www.ncsl.org/research/energy/open-government-laws-and-critical-energy-infrastructure.aspx> (accessed March 9, 2023)



## What is a Public Record?

State laws or regulations define which public records are specifically subject to public disclosure, how long they need to be retained, and which records are exempt. Many documents or records created, controlled, or otherwise managed by government agencies are considered public records. These may include official communications, reports, or other materials created in the course of official government duties.

When it comes to retention and preservation of election records, [52 USC 20701](#) requires the retention and preservation of “all records and papers which come into [the election official’s] possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election...”, for a period of 22 months after each federal election.<sup>2</sup> While this retention requirement applies to all federal election materials, states may require election officials to retain additional materials or require some documents to be retained for a longer period of time.

## Protected Critical Infrastructure Information (PCII) Program

The Protected Critical Infrastructure Information (PCII) Program was created by Congress under the Critical Infrastructure Information Act of 2002. The Program encourages public and private sector owner(s) and operator(s) of physical and cyber critical infrastructure to voluntarily share sensitive security and proprietary data with the Cybersecurity and Infrastructure Agency<sup>3</sup> (CISA). Election infrastructure was designated as Critical Infrastructure by the Department of Homeland Security in 2017. The PCII Program protects information from federal, state, and local disclosure laws, allowing partners to securely share their critical infrastructure information. The PCII Program supports the U.S. Government’s ability to understand and identify:

- Security risks and threats from physical and cyber-attacks
- Vulnerabilities and mitigation strategies
- Critical infrastructure security during planning and emergencies

To qualify for the program, the information must relate to the security of critical infrastructure, and the submitter must submit the information to CISA, providing an express statement seeking protection under the Act. The information must be:

- Voluntarily submitted
- Not customarily found in the public domain
- Not submitted in lieu of compliance with any regulatory requirements

For more information, and to access the submission portal, visit <http://cisa.gov/electronic-submit-cii-pcii-protection>

<sup>2</sup> This provision can only be enforced by the federal government through the Department of Justice and does not create a private right to action. Election officials should check with their attorneys to determine whether state law requires disclosure of these records. This legislation passed prior to the 24<sup>th</sup> Amendment outlawing poll taxes.

<sup>3</sup>See: <https://www.cisa.gov/resources-tools/programs/protected-critical-infrastructure-information-pcii-program>. (Accessed March 9, 2023)



## Best Practices

### Develop a Public Records Policy

State and local elections offices should develop a public records policy that follows applicable state and local laws and regulations. The policy should outline the process for receiving and fulfilling requests, information that is generally available, denial or redaction of information, costs, and records management. Jurisdictions can include policies addressing areas frequently subject to records requests like provisional ballot information. The policy ensures consistency and can set expectations for those submitting records requests.



Clear policies can help requestors better understand what information is available and help staff respond consistently and efficiently to each request.



#### *Case Study: Cuyahoga County Board of Elections, Ohio*

Cuyahoga County Board of Elections, Ohio, has a webpage dedicated to its public records policy. In addition to information about how to request public records, they have posted legal opinions regarding election records that are not subject to public disclosure.

<https://boe.cuyahogacounty.gov/about-us/public-records-policy>

### Set up a Public Records Reading Room

Transparency provides an essential element of customer service for voters, candidates, the media, and other members of the public. By anticipating the information needs of the public, election officials can save valuable time for themselves and their constituents. For frequently requested documents and administrative policies and procedures regarding public records requests, election officials may consider creating a virtual Public Recorder Reading Room. A Public Records Reading Room provides convenient, on-demand public access to documents and information subject to open records laws. Information should be posted in a user-friendly and accessible format.

Jurisdictions can find resources to make information more accessible online such as:

- Open Data Policy: <http://project-open-data.github.io/>
- Digital Services Playbook: <http://playbook.cio.gov/>

When records are proactively disclosed, it can result in efficiencies for jurisdictions when providing records that otherwise might be sought through public records requests. In addition, Public Records Reading Rooms can also contain administrative policies, such as how to request a public record and a list of any documents that have been determined to be exempt from disclosure.



#### *Case Study: Green Bay, Wisconsin*

Green Bay, Wisconsin, has a dedicated webpage where they have published more than 65 records requests pertaining to the 2020 election cycle. The records published consist of thousands of election documents, contracts, e-mails, and other election records produced through public records requests. In addition, the city published various records that were not requested but are relevant to the conduct of the 2020 election, including chain of custody logs. <https://greenbaywi.gov/1217/2020-Election-Records-Requests>



## Create a Frequently Asked Questions (FAQs) Webpage

Members of the public may not be familiar with public records laws and procedures, resulting in additional time and formal correspondence when responding to requests for records. Creating a dedicated FAQ page is one way that election officials can proactively provide accurate information about the public records laws and procedures in their jurisdiction. Jurisdictions can provide information about what types of records they maintain and how to request them. Setting up the FAQ page can also help election officials familiarize themselves with their public records laws and procedures for when they receive public records requests in the future.

FAQ pages can include information about:

- Who can request public records?
- What can I request?
- What can already be found online?
- What is the elections office's retention policy, or how long are records available?
- Are there any exemptions from disclosure?
- Is there a particular form I have to use to make a request?
- Are there any fees?
- Where should I send my request?
- What happens after I submit my request?
- How long will it take before I get a response?
- Can I appeal the response to my request?



Some election records, including voter registration records, contain personally identifiable information (PII) that may need to be redacted before fulfilling a public records request. Election officials should consult their legal counsel before providing records that may include protected information.

FAQ pages can also include information about documents in a Public Records Reading Room if the jurisdiction has one. Additionally, election officials may consider creating a list specifying which records are available. It may be beneficial to identify commonly requested records that may be unavailable either because those records do not exist or are exempt from disclosure under state law. Election officials should work with their local or state legal representatives to ensure their FAQs are an accurate description of state and local laws and regulations.

Technology enables agencies to better oversee, track and respond to public records requests. It has also enabled agencies to better manage, store, and retrieve records. A jurisdiction's website can be a vital resource for the public to find the information already publicly available, request public records through an online portal, and provide information to reduce questions about the process. Digital redaction tools can help expedite the process of protecting confidential information on documents that are otherwise subject to disclosure. Jurisdictions can consult with their IT departments or staff to explore how technology can ease the administrative challenges of responding to public records requests.



### *Case Study: Mendocino County, California*

Mendocino County, California, has a FAQ webpage for public records requests, and they utilize a public records request portal that allows users to search past requests that have been previously released. The search function allows users to filter their search by keywords and whether the request has been fulfilled. <https://www.mendocinocounty.org/government/executive-office/public-records-request> & <https://mendocinocounty.nextrequest.com/>

*Case Study: Palm Beach County, Florida*

Palm Beach County Supervisor of Elections office has a webpage dedicated to public records requests. The webpage has information about how to find election data and statistics, such as detailed election results data, including precinct-level results, vote-by-mail, early voting data, voter turnout, and a variety of election data that is already publicly available on their website. The webpage is also organized so that submitters can request records through an online submission form by category of request. <https://www.votepalmbeach.gov/Records-Data/Public-Records-Requests>

### Appoint a Public Records Officer

If resources allow, jurisdictions should consider designating a single point of contact to respond to public records requests. A Public Records Officer should be trained to receive and process incoming public records requests. They should have a thorough understanding of legal requirements, exceptions, and procedures for responding in a timely manner, while mitigating the impact on the operations of the office. The Public Records Officer should develop an open line of communication with legal representatives to help determine the scope of requests and options to extend the time to respond, if allowable by law. The Public Recorder Officer should maintain contact with other election officials throughout the state to identify guidance or uniform developed responses to wide-scale public records requests.

### Provide Training to Staff

Everyone in an elections office should be provided with general training on public records laws. Training should include what to do when a public records request is received, who in the agency is responsible for responding to requests, and which records are subject to public disclosure.

Public records requests are usually time sensitive, so all election staff should know whom to forward requests upon receipt to enable the jurisdiction to respond in a timely manner. Jurisdictions should institute clear procedures for recognizing and responding to requests. Designating someone in an office responsible for managing public records requests will also help ensure that the request is processed appropriately. Staff should also be trained to preserve and properly store records created in the course of their work.

*Case Study: Virginia Department of Elections*

The Virginia Department of Elections has published a Handbook for records access and retention. The Handbook provides guidance and best practices for handling requests for election records, useful information, additional resources, and reference materials. [https://www.elections.virginia.gov/media/grebhandbook/2020-individual-chapters/9\\_Records\\_Access\\_and\\_Retention\\_\(2020\).pdf](https://www.elections.virginia.gov/media/grebhandbook/2020-individual-chapters/9_Records_Access_and_Retention_(2020).pdf)



## Additional Resources

National Association of Counties

Open Records Laws: A State by State Report

<https://irp.cdn-website.com/4365c51b/files/uploaded/Open%20Records%20Laws.pdf>

Reporters Committee for Freedom of the Press

Election Records

<https://www.rcfp.org/open-government-sections/i-election-records/>

U.S. Department of Justice

FOIA Self-Assessment Toolkit

<https://www.justice.gov/oip/foia-resources/foia-self-assessment-toolkit/download>

Proactive Disclosure of Non-Exempt Agency Information:

Making Information Available Without the Need to File a FOIA Request

[https://www.justice.gov/oip/oip-guidance/proactive\\_disclosure\\_of\\_non-exempt\\_information](https://www.justice.gov/oip/oip-guidance/proactive_disclosure_of_non-exempt_information)

OIP Guidance: Agency FOIA Websites 2.0

<https://www.justice.gov/oip/oip-guidance/OIP%20Guidance%3A%20%20Agency%20FOIA%20Websites%202.0>

