

FOIA in your state

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The federal Freedom of Information Act (FOIA) governs access to records in the possession of federal agencies^{1,2}. In addition to the federal FOIA, every state has a law that governs access to records in the possession of state and local governments and other public bodies, such as public universities. These state laws go by names such as sunshine laws, freedom of information laws, public records laws and open records laws. These state laws have specific exemptions intended to protect sensitive information from disclosure, but the extent of the information protected varies substantially by state³.

All individuals involved in research, regardless of the research area, should care about their states' open records laws. Animal rights activists have increasingly turned to both the federal FOIA and state open records laws to acquire information about biomedical research and the personal information of researchers using animals. Such information has been used to inaccurately label researchers as 'animal abusers' and to target individuals and families at their homes. It might be posted online to encourage harassment. It has also been used to request baseless investigations, to seek criminal charges for alleged animal cruelty and to ask for enforcement actions to be taken for alleged issues involving noncompliance.

Although many state laws include exemptions intended to protect proprietary information, these exemptions have often proven insufficient to protect non-patentable research data, photographs and the personal information of individuals involved in research.

Recognizing this concern, some states have enacted exemptions specifically designed to prevent the disclosure of sensitive research data and the personal

information of individuals involved in research. At least 18 states have enacted exemptions specifically designed to protect research information and other data from disclosure. Public universities have also used exemptions for health and safety and commercial and financial information to protect sensitive research. These exemptions have proven effective at preventing the disclosure of research information in some cases.

In addition, a few states have enacted exemptions specifically designed to protect the personal information of individuals involved in research. Oregon's open records law contains such an exemption⁴, and Utah enacted an exemption in 2008 to protect the name, home and work addresses and telephone numbers of individuals who use animals in medical or scientific research conducted within the state's higher education system⁵. Recently, both Florida and New York amended their laws to protect identifying information of individuals involved with research programs.

State open records laws also vary in regards to the costs a research institution may recover if it is required to disclose information. Many broad and vaguely worded records requests, such as those seeking "all information related to research with nonhuman primates," entail substantial response costs associated with compiling the records and having the institution's legal counsel review thousands of pages to determine what information is protected from disclosure. An open records law that fails to permit an institution to recoup the full costs associated with responding (for example, by only permitting copying costs to be charged) may encourage more broadly worded requests in the future.

For those involved with animal care and use programs at public institutions, it is critical to be aware of the applicable state laws and to ensure that any documents

that may be released are 'FOIA-ready', meaning they are factual, are devoid of extraneous information and accurately reflect an institution's animal care and use program. In addition to ensuring that institutional documents are FOIA-ready, a public university should have in place a records retention policy that meets the requirements of the state's open records law while ensuring that documents are not retained longer than required or necessary.

The National Association for Biomedical Research has completed an analysis of state open records laws for its members, which summarizes and analyzes the open records laws of every state and the District of Columbia as they relate to biomedical research records³. The analysis addressed three criteria: (i) whether the statute exempts research data itself; (ii) whether the statute protects personal information, such as a researcher's name, home address and telephone number; and (iii) whether the law permits a research institution to recover the costs associated with providing the information. On the basis of that analysis, suggestions for improving the open records laws of each state as they relate to biomedical research records were developed. Managers of animal care and use programs at research institutions may wish to use these suggestions to seek revisions to the open records law in their states.

1. Freedom of Information Act as Amended. 5 U.S.C. §552. 2006.
2. National Association for Biomedical Research. *Responding to FOIA Requests: Fact and Resources* (National Association for Biomedical Research, Washington, DC, 2010).
3. National Association for Biomedical Research. *FOIA In Your State* (National Association for Biomedical Research, Washington, DC, 2014).
4. Oregon Public Records Law. Or. Rev. Stat. § 192.501(30). 2011.
5. Utah Government Records Access and Management Act. Ut. Code Ann. § 63G-2-305(52). 2011.

National Association for Biomedical Research, Washington, DC.