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Watch[®]**
*Because no one
is above the law!*

Requesting
Public
Records

**INVESTIGATIONS
AND RESEARCH**



PUBLIC RECORDS REQUESTS - BASICS

**PRESENTED BY BILL MARSHALL, JUDICIAL WATCH
SEPTEMBER 21, 2021**

What the Mainstream Media thinks of you

- ▶ "Freedom of information laws are wonderful things but it is in fact a tactic of national and fast growing local organizations to use onerous public records requests. So what we'll see, what we saw in Maine is asking for all these records requests of, you know, how much money did you spend on anything involving race. And then that is used to sort of frame the school board as paying for CRT. Which again is just not the case."

▶ - Brandy Zadrozny, NBC News reporter

<https://twitter.com/i/status/1405617437752664080>

PUBLIC RECORDS LAWS - Jurisdictions

- FEDERAL – Freedom of Information Act (5 U.S.C. § 552)
- STATES – FOIA, Right-to-Know, Public Information Acts, Sunshine Laws, Data Practices Act
- Counties & Cities – fall under the state public records laws

ELEMENTS OF A RECORDS REQUEST

- **IDENTIFY THE AGENCY** FROM WHICH YOU WOULD LIKE RECORDS - ABC School District, Jane Doe Elementary School, XY State Budget Office
- **SEND TO DESIGNATED RECORDS OFFICE:** SPECIFIC RECORDS OFFICE, DESIGNATED FOIA/RECORDS OFFICER, OR RESPONSIBLE OFFICIAL – Might be General Counsel, Principal, Administrative Officer (websites often provide)
- **CITE THE LEGAL STATUTE YOU ARE USING** – eg, in VA “As a resident of Virginia, I request the following records pursuant to the Virginia Freedom of Information Act (§2.2-3700, et seq.)”

ELEMENTS (CONT'D)

- **SCOPE OF REQUEST** – Will specify the specific types of records sought (more on this to follow)
- **TIME DURATION** – Federal and state public records laws stipulate that requests must be temporally *reasonable* (time frame of search important)
- **FEE WAIVER** – Always request a waiver of fees (non-commercial purpose, educational, media)
- **YOUR CONTACT INFORMATION** – Be sure to inc. your phone number/email address

SCOPE OF REQUEST/TARGETTING

- “WHAT YOU WANT”
- MOST IMPORTANT ELEMENT OF A REQUEST
- RESEARCH THE ISSUE FIRST (records already out there?, records repositories)
- TALK TO INSIDERS/EXPERTS (can identify names of documents, help focus your efforts, identify officials of interest)
- KEEP REQUEST MANAGEABLE (be narrow when describing records, avoid lots of chaff)
- AGENCIES DON'T CREATE RECORDS

SCOPE (CONT'D)

- WHAT RECORDS MIGHT BE OF INTEREST?
 - Course syllabi/outlines
 - Teacher hand-outs
 - Audio/visual presentations (PowerPoints)
 - Teachers' notes/lesson plans
 - Lists of assigned texts
 - Teachers'/Principals' emails (availability may vary from state to state) (see later slide)

SCOPE (CONT'D)

- WHAT RECORDS MIGHT BE OF INTEREST? (cont'd)
 - Budget records for Diversity, Equity, Inclusion offices/programs
 - Policy documents for the creation/establishment of Diversity, Equity, Inclusion offices/programs
 - Contracts, agreements, purchase orders, invoices and financial disbursement records for third party contractors providing services related to diversity training, Critical Race Theory, racial equity
 - Faculty and staff training materials related to diversity, equity and/or inclusivity training

SCOPE (CONT'D)

- EMAILS CAN BE VERY TELLING
 - Must be 'business-related'
 - Ask for emails sent to and from [John Doe/Jane Roe] referencing 'social justice', 'white privilege', 'racial equity', 'Black Lives Matter', 'BLM', 'equity audit', 'cultural competency', 'implicit bias', etc.
 - Be reasonable on time duration (several weeks, several months, probably should not exceed two years – eg, April 1, 2021 to August 31, 2021)

AFTER YOU SUBMIT YOUR REQUEST

- AGENCIES USUALLY HAVE STATUTORY DEADLINES TO MEET IN RESPONDING
 - Varies by state (5 days, 10 days, 30 days, a few have no set deadline)
 - Time extensions often sought
 - Determinations – records are provided, no records exist, records exist but denied

AFTER YOU SUBMIT YOUR REQUEST (CONT'D)

- YOU GET YOUR RECORDS (YAY! maybe)
 - Records arrive, but are heavily redacted
 - Both federal and state public records laws generally have various categories of exempted material
 - Personal privacy
 - Law enforcement proceedings
 - Deliberative process
 - Proprietary/commercial information (like vendor rates)

AFTER YOU SUBMIT YOUR REQUEST (CONT'D)

ADMINISTRATIVE APPEALS

- If you get no records, you can appeal
- If you get partial records, you can appeal the redactions
- You generally have a limited period of time after a determination is made to appeal – varies by jurisdiction
- The agency/school/etc generally has a statutory deadline to respond to an appeal
- Administrative appeals are usually necessary to exhaust before you can file a lawsuit. You have to let the system play out.

RECENT JW CRT REQUESTS

- USMA
- USAFA
- USNA
- Montgomery County Public Schools (Thomas Pyle MS, Greenwood ES)
- DoD – Office of SecDef/JS, Countering Extremism Working Group
- Virginia DOH – vaccine ‘race’ data

SAMPLE JW EDUCATION-RELATED CRT RECORDS REQUESTS

- ▶ THOMAS PYLE MIDDLE SCHOOL
- ▶ MONTGOMERY COUNTY SCHOOL SYSTEM
- ▶ UNITED STATES MILITARY ACADEMY

INTERESTING HEADLINES

- ▶ *Teachers Union Sues Mom Nicole Solas To Prevent School District From Releasing Critical Race Teaching Records*
- ▶ *Judge Orders Antifa Activist Yvette Felarca to Pay Judicial Watch Legal Fees for Her 'Entirely Frivolous' Lawsuit*
- ▶ *Judicial Watch: Montgomery County Public Schools Spent \$454,000 on 'Anti-racist System Audit'*

JW WORKING FOR THE PUBLIC



- ASSISTANCE TO OTHER NONPROFITS
- ASSISTANCE TO INDIVIDUALS (LEGAL AND FOIA)
- ASSISTANCE TO CONGRESS AND STAFF
- ASSISTANCE TO FOREIGN OFFICIALS FIGHTING SOME OF THE SAME FIGHTS WE ARE

THANK YOU!

Bill Marshall

Email: bmarshall@judicialwatch.org

JW Website: www.judicialwatch.org