

FOIA Requests for Electronic Records

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Freedom of Information Act coordinators have a difficult task nowadays given the exponential growth of electronic records. In order to ease the burden of responding to myriad requests for public records, FOIA coordinators should consider using the following practices used in civil litigation, which also must deal with large volumes of electronic records.

Negotiate with the Requester

Oftentimes, a FOIA request is broadly written making compliance difficult, if not impossible. In such cases, the FOIA coordinator should negotiate with the requester about

- The time frame covered by the request. Seek to narrow when possible.
- The number of record holders. If lengthy, try to pare down to "key players."
- Search terms. Work to develop a list targeting the most likely responsive documents.
- De-duplicate the data. Agree that multiple copies of the same record do not need to be produced.
- Produce records over time. Agree that responsive records will be produced in stages beginning with the most highly relevant records.

Use Specially Designed Software Tools

These negotiating strategies make the most sense when combined with the use of special software designed specifically to locate and collect responsive electronic records. Once the potentially responsive records are found, the software can be used to reduce the volume by applying the negotiated time frame restrictions and search terms, and then de-duplicating the records.

When these steps are complete, the electronic records still need to be reviewed prior to production. Again, special software is available to process the records for viewing. The records are stored in a database and the software allows the user to mark the records that should be produced, those that are statutorily exempt from production, and those that contain some exempt information, but can be produced in a redacted format. Even notes regarding each record's treatment can be saved for later reference. These tools make keeping track of what decisions were made with respect to each record much easier. The information is stored in the database along with the records. So, if questions arise later with respect to a particular document, the FOIA coordinator can quickly locate the record and see what decisions were made with respect to that document.

Conclusion

In this age of electronic information, FOIA requests present the same challenges as requests for production of documents in civil litigation. FOIA coordinators should consider using the same strategies and software tools used in civil matters to make production of electronic information more manageable.