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Piercing the Veil: Examining Demographic and Political Variables in State FOI Law Administration

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Abstract

State and local governments play an important, and growing, role in everyday lives. The exploratory study positions FOI laws as a central mechanism in providing transparency to these more proximate governments. It is premised on a FOI audit, or field experiment, of 1002 requests across 9 U.S. state laws and 334 jurisdictions. The sample represents a broad cross-section of geographic, demographic and political variables, and the study analyzes these variables predictive and correlative value in determining outcomes, timeliness and communication in FOI requests. The results suggest significance in race and political variables in FOI outcomes and processes. The study's strongest finding was the influence of geographic location, namely the central South of the United States, and its considerable effect on FOI compliance.

Keywords

FOIA, FOI, Public records, Government accountability, Government transparency, Audit

1. Introduction

Freedom of information (FOI) laws, the actionable individual right to government records, are a relatively recent legal development. Ackerman and Sandoval-Ballesteros (2006) document only two such national laws (in Sweden and Colombia) existing prior to 1950, followed by a substantial wave of FOI laws across the globe. The international diffusion of these laws was aided by transnational organizations like the United Nations and the World Bank in an effort to help control corruption and promote good governance. Michener (2011) said the incredible growth and popularity of FOI laws was grounded in a belief that these laws “make governments more professional, predictable, and accountable, and citizens more proactive in public life” (p. 146).

While there are numerous criticisms of FOI laws, there seems to be a consensus that ready access to government information “proves crucial for the public weal and for public decency” (Kreimer, 2018, p. 158). In short, self-governance requires public information. In describing the federal FOI law, the U.S. Supreme Court put a fine point on its role, identifying it as “a structural necessity in a real democracy,” and warning the law's aims were “not to be dismissed as a convenient formalism” (NARA v. Favish, 2004, p. 172).

FOI laws necessity and value lie in their utility as legal leverage in understanding “the paradoxical relation between free men and their legislative agents” (Meiklejohn, 1953, p. 463). The reluctance of those legislative agents to perform their governmental duties honestly and transparently has generated FOI laws as a statutory measure for prying information from unwilling departments and agencies. Judge Wilfred Feinberg once said the first-order objective of public records laws was “to pierce the veil of administrative secrecy” (Rose v. Air Force, 1974, p. 263); the implication being that force was necessary.

And while government accountability and transparency interests have migrated and evolved, there is no comparable mechanism at present. Prior to the advent of FOI laws, access to government information typically relied on informal agreements between information seekers and the government. Often the transaction depended on preexisting relationships and power dynamics, and those dissatisfied with the outcome rarely had an opportunity for recourse. FOI laws are the product of exasperation with this ineffective arrangement.

Though there are issues in design and implementation, continued refinement and rehabilitation of these laws would likely produce positive democratic outcomes. There is no better mechanism—extant or on the horizon—for acquiring government information from unwilling officials than FOI laws. In pursuit of this rehabilitation, the study seeks to identify environmental factors that affect the processing and results of FOI requests. The project involved 1002 public records requests across 9 different state laws and 334 jurisdictions. The requests covered a broad range of geographic, demographic and political variables to assist in making quantitative determinations about how FOI laws do and do not work. The study is motivated by Michener's suggestion that “more attention needs to be paid to how basic political pre-conditions influence the strength and effectiveness of FOI laws” (p. 157). And while the study is exploratory in nature, it moves beyond investigation of static laws and examines application and how FOI laws function. The study's value is the broad sweep of the audit, allowing for analysis of a wide range of non-legal variables that have relationships with the outcomes, the timeliness and the communication of FOI law administration.

First, the study considers the origins of state right to know laws in the United States, while underscoring the need for more scholarly attention on local public records laws. Then, the study examines the growing literature on quantitative assessments of public records laws with a particular focus on research grounded in coordinated

audits of FOI processes and outcomes. The article seeks to highlight the factors scholars have identified as constructive or inhibitive in FOI processes and outcomes and continues to build on this important literature.

2. The growing importance of state FOI

The U.S. right to know movement was rooted in concerns over coalescing secrecy practices and a growing hostility to requesters, and this changing attitude was often attributed to the remnants of World War II and the advent of the Cold War, but in many U.S. states, FOI laws predated these national security issues. In the case of Wisconsin, the state law preceded the federal FOIA by more than a century. Considered to be the first FOI law in the United States (Hoefges, 2003; Kidwell, 1989), the state established the public's right to know in 1849, one year after Wisconsin was granted statehood. By 1856, the state supreme court required public offices to provide wood for heating and candles for lighting so that citizens could comfortably examine local clerks' records (De La Mora, 1983). The early motives for a right of access were grounded in financial and property interests, but before the turn of the twentieth century, the Wisconsin Supreme Court insisted the right applied to all citizens, not just those with financial interests, deciding curiosity was a sufficient purpose and establishing significant fines for public officers violating the law.

All 50 states have FOI statutes, and all are patterned on the federal Freedom of Information Act (FOIA). Some are vague, dated and largely dependent on common law, offering little respite for information seekers due to inattention and unfortunate judicial interpretations. Other states are more committed to FOI. At least five states have written the public's right to know into their state constitution (Bunker, Splichal, Chamberlin, & Perry, 1993). Despite their varied origins and evolutions, they share many similar legal characteristics.

A guiding tenet of nearly all state FOI laws is a prioritization of access ahead of agency interests. Many states explicitly identify access to government information as a primary responsibility of public bodies. Others include strong language in their state statutes insisting on individual access. The Washington Public Records Act (2019) makes clear that the ultimate power is in the hands of the citizenry: "The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know." In Wisconsin, refusing access is determined to be "contrary to the public interest, and only in an exceptional case be denied" (Wisconsin Open Records Law, 2020). The purpose of Hawaii Uniform Information Practices Act (2017) is "[o]pening up the government processes to public scrutiny." Many, including New Jersey, underscore that when uncertainty arises, the decision "shall be construed in favor of the public's right of access" (New Jersey Open Public Records Act, 2020). In Iowa, the convenience and the comfort of government officials is superseded by the public interests with the statute instructing judges "that free and open examination of public records is generally in the public interest even though such examination may cause inconvenience or embarrassment to public officials or others" (Iowa Open Records Law, 2020).

While federal laws receive the majority of scholarly interest and press coverage, state FOI laws are of great and growing importance. These laws provide access to a "storehouse of information of nearly equal proportions and potential utility" to its federal brethren, the FOIA (Braverman & Heppler, 1981). And due to the general legal principle of supremacy, state FOI laws are not subject to local ordinances or regulations that might attempt to legally shield smaller units of government, giving the laws expansive reach. Many states extend the purview of their right to know laws into the legislature, the governor's office and the state's courtrooms, where the FOIA is limited to only executive departments and agencies. As a result, state FOI laws touch the vast majority of sub-federal government activity (though this varies state-by-state), providing the public a broader legal window into these more proximate governments.

Fink (2018) found that journalists submit more state and local public records requests than federal FOIA requests. Worthy (2013) has documented similar findings in the United Kingdom where substantially more

requests were submitted to English local governments than the central U.K. government. Koningisor (2020) found that state and local governments continue to grow in size, scale and authority, going so far as to suggest that, in aggregate, local governments dwarf the federal government (p. 1466). Political and administrative trends suggest local and state governments will only grow in influence. As partisan divides harden, state and local governments play a primary role in representing local interests and resisting federal policies and actions (Koningisor, 2020, p. 1467). State public records laws become more salient and meaningful as the governments they oversee assume larger roles in citizens' lives, making state FOI laws of parallel importance.

However, openness and accountability in many state and local public bodies lags behind that of federal agencies, likely due to higher profile and greater general interest. Pozen (2017) has suggested executive branch departments and agencies are some of the most heavily scrutinized entities in the world, and as a result, they have built significant, costly infrastructure to administer to the volume of requests received. Relative to these federal operations, municipal and county efforts pale in comparison, and familiarity with the intricacies of FOI laws can also vary dramatically. There is a presumption that more local governments are more responsive and transparent than larger federal offices. Seifter (2018) has found this belief that more proximate, less harried public bodies will be friendlier not to be true. She suggested that neither public expectations of transparency nor the culture of transparency has transferred into state and local governments, even as they assume larger roles in everyday lives.

In an audit of New York's Freedom of Information Law, Fink (2019) suggested smaller jurisdictions pose significant FOI challenges despite the supposition that municipal governments will be more hospitable. She found that nearly a quarter of the requests involved questions and negotiations, many offices proving suspicious of her motives and identity, despite the utter lack of consequence of the request (dog license information). Place can be a powerful variable in the fulfillment of FOI request. FOI outcomes can be influenced by size of the jurisdiction, personnel in the office, attitudes of local leadership, the loyalties of the records clerk, the visibility of the office and even the constitution of local news media.

2.1. The history and necessity of FOI laws

As state and local governments grow in importance, criticism for FOI laws has grown louder. There is a sizable body of scholars that have become so dismayed with the present state of FOI laws, and in particular the federal FOIA, that they have called for governments to transition their accountability and transparency focus to other legal mechanisms. Stewart and Davis (2016) called the federal FOIA “irrevocably broken,” suggesting 50 years of amendments and judicial interpretation have done little to improve it. Pozen and Schudson (2018) suggest the FOIA was “floundering, even in a state of crisis” (p. 4). A primary criticism of FOI laws is that they foment hostility between requesters and the government (Noveck, 2018; Pozen & Schudson, 2018). The very foundation of the law butts the requesters' desires against the ongoing operations of the government. In nearly all government departments, agencies and offices, complying with public records laws is an underfunded, tertiary duty; an obligation that results in irregular, often time-consuming work from an outsider (Wagner, 2017). Pozen (2017) and others have called for a pivot away from FOI laws as the primary access mechanism, suggesting that not only do they fail to meet their objectives, they have become so sclerotic as to actually subvert transparency efforts and are more likely to be used as tools of government secrecy (pp. 1150–51).

There is a belief that proactive disclosure—or similar mechanisms, like affirmative disclosure or open data—would mitigate hostility in the request process. Proactive disclosure has been called “transformational,” and a solution to “traditional top-down administrative commands” (Kassen, 2013). However, the advantages of other access mechanisms like proactive disclosure are exceeded by their inability to pierce the veil of government secrecy. While many are justifiably disillusioned with the contemporary status of FOI laws and their

administration, the path to government transparency is through rehabilitation of the laws, not a return to reliance on government's voluntary dissemination of information. Those that are calling for a shift away from a FOI focus are failing to consider the history of such laws. The contemporary rise of FOI is the product of preexisting proactive and affirmative disclosure regimes. In the United States, the right to know movement was set on "strick[ing] down barriers to access" (Cross, 1953, p. xiv). James Pope, a newspaper editor and a chair of a national journalism organization, had received a surge of complaints from other editors and journalists across the country regarding "the red-tape curtain with which so many officers of government try to shroud their official actions" (Pope, 1953, p. ix). Pope said the occasional local skirmish over access had quickly become something different; a broad and growing offensive against freedom of information. Harold Cross (1953) cataloged the disarray and inconsistency of access to government information throughout the United States, citing "bureaucratic officiousness" as a primary culprit (p. 5).

Cross documented the troubling trends in access to government information, highlighting the language of the prevailing federal access law in the Administrative Procedure Act:

"[Public officers] obscure the frontier between the part of the public business which they conceal because publication is not, as they say, 'compatible with the public interest' and that part which they conceal because, in their view, cognizance is none of the public's business. They open to those whom they favor files which they keep secret from those upon whom they frown. They exercise authority to decide which citizen-suppliant for their indulgence is 'responsible' or which one is 'directly or properly' concerned with the information he seeks or which one has an 'interest' sufficient to set their grace in favorable motion." (Cross, 1956, p. 56).

In the article, Cross provided examples of the muddle of existing laws and justifications for secrecy. One state official responded to a request, "I own the building and I'll say what goes on here" (Cross, 1956, p. 57). The military denied a request for the amount of peanut butter consumed under the rationale that it would provide an enemy with an advantage. A federal committee asked three different agencies whether a uniform record was available, only to receive three distinctly different responses. One said the records were public. Another said they had no set policy on the availability of such a record. And the third said a determination would be based on the legitimacy of the purpose and the responsibility of the individual making the request. The lack of substantial laws allowed for a great deal of discretion, which government increasingly used as justification for denials. There was little recourse for requesters that experienced these outcomes, and the impunity emboldened public bodies.

Three recent studies explored the impact of FOI laws when asking the government for information. Spac, Voda, and Zagrapan (2018), Grimmelikhuijsen, John, Meijer, and Worthy (2018) and Worthy, John, and Vannoni (2017) asked public bodies for information under two conditions: one as a formal FOI request referencing the law and one as an informal request. In all scenarios, the outcomes with the formal request were better. For Grimmelikhuijsen et al. (2018), the formal FOI request increased response by 25%. In the Worthy et al. (2017) study, the formal request was 11% more likely to receive a response and statistically better at every stage of the process and outcome. Both studies also considered "concordance," where the request included a subsequent query that exceeded the parameters of the law; here to post the requested information online for all. In both studies, the formal FOI request produced increased concordance. While these results are somewhat intuitive, they also point to the value and importance of FOI laws. Even in environments with public records laws, access to government records is diminished when the request does not explicitly appeal to these laws. Acknowledgement of the law also produced more voluntary information. Outcomes like these suggest that not only are FOI laws valuable in ensuring compliance, they foster a climate of transparency.

3. Demographic and political variables in FOI

The study is an exploratory field experiment, often referred to as a public records audit (Ben-Aaron, Denny, Desmarais, & Wallach, 2017; Cuillier, 2010; Grimmelikhuijsen et al., 2018; Lagunes & Pocasangre, 2019; Spac et al., 2018; Worthy et al., 2017), where coordinated public records requests are measured against variables in determining characteristics with significant relationships with processes and results. These field experiments explore different elements of the request process. Worthy et al., 2017 and Grimmelikhuijsen et al., 2018 examined potential relationships in making a formal FOI request versus an informal ask for information in British and Dutch jurisdictions. Interestingly, the two studies explored a concept they called concordance, making a secondary ask that exceeded the formal law. Spac et al., 2018 similarly tested the formal mention of FOI law on request processes and outcomes in Slovakia, along with a variable exploring positing an additional moral appeal to public bodies. Cuillier (2010) evaluated the language and tone of requests letters, ranging from righteous and litigious to demure. Ben-Aaron et al. (2017) tested outcomes when notified of peer-compliance. The study determined knowledge of neighboring counties compliance with the request influenced the outcome of a request. Lagunes & Pocasangre (2019) evaluated the influence of requester identity on a Mexican FOIA request; one from a nondescript individual and one from an individual in a position of economic and political clout. The study had the added element of being conducted in intervals over an 8-year-period, allowing for longitudinal assessments of compliance.

Perhaps the most closely examined variable across the studies was the influence of population or size of the jurisdiction. The results were mixed. Spac et al. found a larger population to be a strong factor in improving responsiveness across all four versions of the request letter. Ben-Aaron et al. documented faster response times for larger populations but no significance in request fulfillment. Grimmelikhuijsen et al., 2018, Worthy et al., 2017 and Cuillier (2019) found no significance in processes or outcomes when considering population.

Two of the strongest factors in the Spac et al., 2018 study were the ethnic composition of the jurisdiction and political affiliation of the mayor. Both ethnicity of the jurisdiction and political and gender identities affected the success in receiving an answer from public bodies. The authors considered the possibility of language barriers as a driver, but the study documented municipalities with higher percentages of ethnic minorities had less success with requests. Towns with independent, rather than right, coalition or other political affiliations, of their mayor, along with female mayors, also had better FOI outcomes.

When considering income, Grimmelikhuijsen et al. found no significance to mean income of the jurisdiction. On an individual level, Lagunes & Pocasangre found neither recognizable economic nor political clout of the requesters influenced the outcome, suggesting that on a more granular scale income nor political requester identity alter processes.

Cuillier (2019) most closely reflects the present study. He analyzed public records requests, testing for correlations among a battery of demographic, political and legal variables. The study examined more 7000 state-level requests sourced through MuckRock, a professional service that provides aid in navigating the request process. The sample included requests from all U.S. 50 states and D.C. over a four-year period, 2014–2017.

Among Cuillier's demographic findings, higher internet penetration and liberal ideology were found to have positive correlations with better compliance. Religiosity was found to have a negative correlation with compliance. Education and income variables were found not to have a significant relationship with compliance. The most striking finding of the Cuillier study was the relationship between a specific geography and compliance. He found the central southern states (Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, Tennessee and Texas) to have a much lower compliance percentage, 28%, relative to all other states, 44%, and this relationship proved to be statistically significant when controlling for a broad range of variables.

There has been considerable research on civic attitudes toward access to government information. Assuming local governments are at least semi-representative of local interests, public support may act as a first-level indicator of local FOI laws administration. It would seem to follow that public interest and advocacy by locals would result in a government more engaged in fulfilling these expectations. In two studies, age was a significant factor in supporting access to government information. Cuillier and Piotrowski (2009) found a significant correlation with age and support in two of their three samples. Piotrowski and Van Ryzin (2007) found a correlation between age and increased demand for access to information in three of their four dependent scales. Political ideology was another recurring variable. Prior to their research, Cuillier and Pinkleton (2011) had found political values to be the best predictor of support for government transparency, and their study confirmed it. In particular, a liberal ideology was found to be a significant positive predictor of support for access. Driscoll, Splichal, Salwen, and Garrison (2000) found only one significant variable, among many, in considering support for journalists' access to government records. Men were significantly more likely than women to support this kind of access. And from their 2009 study, Cuillier & Piotrowski documented, across all three samples, individuals reliant on the internet for information were more supportive of access principles.

The studies of civic support for access to government information document inconsistency in determining which variables influence support. Age and political values and ideals seem to be the strongest predictors of support for access to government information. Other variables, like race, gender, religion and education, demonstrated little significance in determining civic support for access. The results of the civic attitudes surveys resemble the findings of FOI audits. Across studies (and borders), there is limited recurrence in the different studies, though there are interesting trends and observations. In an effort to better understand these preconditions, the study has developed three questions testing geographic and demographic variables, along with a series of variables explicitly testing politics and political representation.

The below research questions were asked to determine the relationship between state public records requests results and county and office characteristics:

RQ1: Are public records request outcomes related to demographic or political variables?

RQ2: Are response and completion times related to demographic or political variables?

RQ3: Is agency communication related to demographic or political variables?

4. Method

4.1. Sample states

The study is premised on an audit of the public records laws in nine states: Florida, Iowa, Maine, Mississippi, New Jersey, Oklahoma, Washington, Wisconsin and Wyoming. The states were chosen due to geographical diversity, variety in public records statutes and reputations regarding access to government information. The United States Census Bureau divides the nation into four regions (Northeast, Midwest, South and West) and nine divisions (New England, Mid-Atlantic, East North Central, West North Central, South Atlantic, East South Central, West South Central, Mountain and Pacific). Each region is represented with two sample states (three for the South) and each division is represented with one sample state. In each sample state, three public records requests were sent to counties. In Maine, New Jersey, Washington, Wisconsin and Wyoming, all counties were included. In Florida, Iowa, Mississippi and Oklahoma, half of the counties were sampled, and the counties were sorted by population size and every other county was chosen, starting with the most populous.

The statutes of the state FOI laws were analyzed, and states were chosen due to differing approaches to statutory deadlines, penalties, exemptions and oversight offices. In addition to the state codes, the Reporter's Committee for Freedom of the Press Open Government Guide was consulted in examining these laws. In determining the state sample, the study took into account state transparency and accountability reputations. In

2015, the Center for Public Integrity produced a State Integrity Investigation, which considered a range of accountability and transparency measures, among them a public access to information score (Qui, Zubak-Skees, & Lincoln, 2015). This access score was primarily scored not on the static statute but the performance of the law, as determined by local journalists and lawyers. These rankings placed Iowa at the top; Wisconsin in the upper-third; Florida, Mississippi, Maine, New Jersey and Washington in the middle-third; Oklahoma in the bottom-third; and Wyoming last. The study also included Cuillier's (2019) findings on raw compliance, where Washington, Iowa and Wyoming were in the top-third; Wisconsin and Florida in the middle-third; and Maine, Oklahoma, New Jersey and Mississippi in the bottom-third. In sampling states with mixed public records reputations, the study looks to add to the discussion on FOI implementation and further explore the conditions that produced these rankings and reputations.

4.2. Request process

The audit counted 1002 requests submitted across two time periods. The majority of the requests, 786, were submitted to eight states on June 3, 2019. The last request was completed on Dec. 4, 2019 (though a small number of requests were never completed and recorded as failed). These requests were submitted and pursued by the author and four graduate research assistants. The remaining 216 requests were submitted to the 72 Wisconsin counties with the aid of a graduate class. These requests were submitted on Feb. 11, 2019 and completed on July 10, 2019.

The requesting process itself took part in three stages: collection of request information, submission and coordinated follow-up communications, which occurred in cases where the public body provided no acknowledgment of receipt, evidence of progress or a date of delivery. Three weeks after the request was submitted, a follow-up email was submitted on all open requests. Two weeks later, another email was sent. The second round of emails included a search for additional county personnel that may be able to aid in filling the request (e.g., district attorneys, county clerks, etc.). Two weeks after the second email, a phone call was made. Two weeks after the phone call, another call was made. Every two weeks thereafter, email and phone communications were alternated.

Each request was submitted as an email. The body of the email included specific reference to the state public records statute, and the request was included as an attached PDF document. The attachment included the body's contact information, a request adapted from the National Freedom of Information Coalition's state request template, including acknowledgement of the state's statutory deadline, where applicable, and an appeal for any denial or delay to be substantiated with the appropriate legal reference. The letter's tone was an amalgam of Cuillier's (2010) honey and vinegar letters. Cuillier's vinegar letter liberally quoted the state statute and ended with a threat of litigation for noncompliance, while his honey letter was "friendly" in tone and did not reference the statute or threaten litigation. The requests used in the audit cited the statute, were sober in tone but not contentious and threatened no litigation.

Across the 1002 requests, five different requests were used. They sought five different records, and each was directed at a different government entity. In all 334 counties, a request was submitted to the county sheriff's office seeking "all incident reports or initial offense reports produced by the county sheriff's office for the dates Dec. 31, 2018, and Jan. 1, 2019." In seven sample states, excluding Oklahoma and Maine, a request was submitted to the county office responsible for roads maintenance (e.g., departments of roads, public works, highway, secondary roads, transportation and road and bridge) seeking "all civilian complaints filed with your office mentioning 'potholes' or 'pot holes' for the calendar years 2016, 2017, 2018." Due to a lack of county-level roads departments, the pothole request was submitted to county commissioners in Oklahoma. In Maine, a request was submitted to the county Emergency Management Agency for "the county's most recent Hazard Mitigation Plan." In all states, except Wisconsin, a request for "all collective bargaining agreements signed into

effect by the county between Jan. 1, 2019, and June 1, 2019” were submitted to the highest ranking official, body or records clerk in the county. These officials and bodies had a variety of titles and names, including county executive, county administrator, county clerk, county commissioner and county board. In Wisconsin, a request was submitted to each county's district attorney for “the district attorney office's biennial budget request for the years 2010, 2012, 2014, 2016 and 2018.” Variation from the three core requests—incident reports from sheriffs' offices, pothole complaints from roads departments and collective bargaining agreements from county administration—were the result of differences in the constitutions and responsibilities of state and local governments.

4.3. Dependent variables

Five dependent variables were used to evaluate the relationships between outcome, time and communication and the independent variables. The Outcome variable coded the results of the 1002 requests into three categories. The Positive Outcome variable accounted for all requests that concluded in either a grant of the requested records or a notice that the information had already been published online ($N = 663$). The Neutral Outcome variable included all requests that resulted in the public body replying that they had no records responsive to the request ($N = 342$). The Negative Outcome variable accounted for requests that were denied (even if granted after dispute) or never satisfactorily completed ($N = 27$). The reasons for failed requests include offices or departments repeatedly failing to respond to attempts at communication, an office decision to not deliver responsive records and general misinterpretations of the law.

To evaluate the second research question, two dependent variables were used for Time. The first, Days until Completed, was a count of the number of days, from initial submission, to complete the request. The second, Days until First Response, was a count of the number of days, from initial submission, to receive a first response from the public body. To evaluate the third research question, two variables were used for Communication. The first, No Response, was a count of the number of times the public body failed to respond to the request, or the number of times the request was ignored. The second, Additional Contacts, was a count of the number of additional communications after initial submission the request required. Table 1, Table 2 provide descriptive statistics for the dependent variables.

Table 1. Descriptive statistics for dependent variables by state.

State	N	Outcome			Time		Communication	
		% Pos.	% Neu.	% Neg.	Avg. Days Comp.	Avg. Days 1 Resp.	Avg. # No Resp.	Avg. # Add. Cont.
Florida	102	70	30	0	18	6	0.28	0.66
Iowa	147	65	35	0	16	12	0.51	0.61
Maine	48	73	21	6	9	4	0.15	0.35
Mississippi	123	37	55	8	28	22	1.35	1.91
New Jersey	63	73	27	0	16	10	0.35	0.57
Oklahoma	117	23	68	10	22	19	1.04	1.71
Washington	117	92	9	0	13	4	0.10	0.30
Wisconsin	216	81	19	0	14	9	0.32	0.52
Wyoming	69	45	51	4	15	10	0.42	0.61
All	1002	63	34	3	17	11	0.53	0.84

Note: Not all requests were completed. Average Days until Completed does not include requests that were not completed.

Table 2. Descriptive statistics for dependent variables by public body.

Body	N	Outcome			Time		Communication	
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		% Pos.	% Neu.	% Neg.	Avg. Days Comp.	Avg. Days 1 Resp.	Avg. # No Resp.	Avg. # Add. Cont.
Sheriff	334	90	4	6	21	12	0.85	1.30
Road	279	54	44	1	17	11	0.35	0.51
County Ad.	301	32	67	1	14	11	0.31	0.56
Emerg. Mgt.	16	100	0	0	5	5	1.50	2.38
Dist. Att.	72	99	1	0	12	10	0.43	0.69
All	1002	63	34	3	17	11	0.53	0.83

Note: Not all requests were completed. Average Days until Completed does not include requests that were not completed.

4.4. Independent variables

The independent variables were broken into two categories: Demographic and Political variables, and the descriptive statistics of these variables can be found in Table 3. Demographic variables were predominately sourced from the U.S. Census Bureau. The study uses Cuillier's definition of the South, or the Central South, for statistical tests. This includes Mississippi and Oklahoma from the Census Bureau divisions of the East South Central and West South Central, and not Florida of the South Atlantic division.

Table 3. Descriptive statistics for independent variables.

Variable	Mean	SD	Min.	Max.	N
Population	121,334	268,448	2189	2,715,516	334
Gender (% male)	50.01	1.89	44.40	61.10	334
Age (median)	41.60	5.54	24.60	67.00	334
Race (% white)	85.40	16.46	13.40	99.60	334
Language (% non-English)	6.54	8.26	0.10	74.30	334
Income (\$ median house)	53,769	13,171	20,188	112,535	334
Education (% bachelor's)	23.52	9.26	8.20	57.40	334
Employment (% unemployed)	5.46	2.43	1.40	19.10	334
Religion (% adherents)	50.27	16.20	13.80	98.40	334
Computer (% ownership)	85.20	5.99	63.40	95.80	334
Internet (% broadband)	74.75	9.17	38.40	95.80	334
2016 Election (% Republican vote)	58.48	14.95	16.21	89.25	334
State Political Rep. (Republican reps.)	1.94	1.05	0	3	334

Note: N is the number of counties. Three requests were submitted to each county.

Population, Gender, Median Age Education, Income, Race, Language, Employment, Computer and Internet are from the 2018 American Community Survey 5-Year Estimates. Gender is the percentage of males in the county. Language is the percentage of the county population that use a language other than English as their primary language. Education is the percentage of the county population 25 years and older that has a bachelor's degree or higher. Employment is the percentage of the county population 16 years and older that is unemployed. Computer is the percentage of the county population that has one or more types of computer device at their disposal. Internet is the percentage of county population that has broadband service of any type. Religion is drawn from the 2010 Religious Congregations Membership Study. It was a national county-level survey of religious adherents (of more than 100 different faiths and creeds). The variable represents the percentage of the county population with any religious affiliation.

The Political variables are based on voting and political representation. In determining the representation variables, the office of a central county administrator or court was used. Counties do not perfectly correspond with political representation districts, so a central geographic location was chosen in determining political representation for the county. Most often this was the county government center, the county administration building or the county clerk's office; other times it was the physical county courthouse address or the clerk of court's office. State Political Representation is variable developed by identifying representation in the state legislature and the governor's office. Republicans were coded a 1, and Democrats a 0. (In the single instance of an independent, the previous party identification of the individual was used. In seats open at the time of calculation, the political party of the previous representative was used.) The variable is the sum of the representatives. The 2016 Election variable is derived from the 2016 presidential voting tally and represents the percentage of the county's votes for the Republican candidate.

4.5. Model

The Outcome variable is categorical and is treated as nominal. With three possible codings, it is multinomial. Given the distribution of the dependent variable, multinomial logistic regression was used. The reference group was the Neutral Outcome. Accordingly, each predictor has two parameters, one for predicting membership in the Positive Outcome group and one for the Negative Outcome group. To facilitate interpretation of differences between predictors, each of the predictor variables had been standardized to mean 0, standard deviation 1. For the Time and Communication dependent variables, Poisson regression modeling was considered as normal distribution of residuals could not be assumed. The lowest possible count is zero and the nature of the variables leaves error distribution highly skewed to the right. For the Communication variables, Poisson regression proved to be a good fit. Due to the larger mean of the Time variables, the data was overdispersed, resulting in use of negative binomial regression, which relaxes the assumption of equality of mean and variance and allows for more variability in the data.

5. Results

The study first addressed RQ1: Are public records request outcomes related to demographic or political variables? The parameter estimates are shown in Table 4. Six predictors had significant parameters for comparing the Positive Outcome with the Neutral Outcome, and two predictors had significant parameters for comparing the Negative Outcome with the Neutral Outcome, which can be seen in Table 5. Central South and Religion were the only predictors with significant parameters for both the Positive and Negative Outcomes. The odds of a Positive Outcome rather than a Neutral Outcome were more than halved for those in the Central South predictor. The odds of a Negative Outcome rather than a Neutral Outcome were 5-times more likely for those in the Central South predictor. All other predictors held constant, the odds of a Positive or a Negative Outcome rather than a Neutral Outcome were slightly reduced for each standard deviation increase in Religion. Race was the only other significant positive predictor for Positive Outcomes. For each standard deviation increase in Race (higher percentage of white population), the odds of a request being in the Positive Outcome rather than a Neutral Outcome are multiplicatively increased by 1.20. Both the 2016 Election and State Political Representation predictors had significant parameters for comparing Neutral Outcomes with Positive Outcomes. For each standard deviation increase in 2016 Election (higher Republican voting percentage) and State Political Representation (number of Republican representatives), the odds of a Neutral Outcome rather than a Positive Outcome decreased.

Table 4. Predictors' unique contributions in the multinomial logistic regression ($N = 1002$).***

Predictor	χ^2	df	p
South	9.344	2	0.009**
Population	1.083	2	0.582

Gender	0.304	2	0.859
Age	2.197	2	0.333
Race	4.189	2	0.123
Language	0.050	2	0.976
Income	1.061	2	0.588
Education	3.554	2	0.169
Employment	0.531	2	0.767
Religion	5.702	2	0.058*
Computer	0.347	2	0.841
Internet	0.524	2	0.770
2016 Election	12.975	2	0.002**
State Political Rep.	4.866	2	0.088*

Note: χ^2 = amount by which $-2 \log$ likelihood increases when predictor is removed from the full model.

* $p < .10$.

** $p < .05$.

*** $p < .01$.

Table 5. Results of multinomial logistic regression contrasting the neutral group versus positive and negative groups ($N = 1002$).

Predictor	Neutral vs.	<i>B</i>	<i>OR</i>	<i>p</i>
South	Positive	-0.677	0.508	0.033**
	Negative	1.708	5.517	0.088*
Population	Positive	0.000	1.000	0.701
	Negative	0.000	1.000	0.448
Gender	Positive	0.010	1.010	0.817
	Negative	-0.045	0.956	0.659
Age	Positive	-0.011	0.989	0.503
	Negative	-0.096	0.908	0.175
Race	Positive	0.020	1.020	0.040**
	Negative	0.015	1.015	0.598
Language	Positive	-0.001	0.999	0.928
	Negative	-0.012	0.988	0.833
Income	Positive	0.000	1.000	0.308
	Negative	0.000	1.000	0.812
Education	Positive	-0.026	0.974	0.077*
	Negative	-0.048	0.954	0.346
Employment	Positive	0.018	1.018	0.696
	Negative	0.069	1.071	0.494
Religion	Positive	-0.10	0.990	0.084*
	Negative	-0.032	0.969	0.060*
Computer	Positive	0.017	1.017	0.647
	Negative	0.042	1.043	0.670
Internet	Positive	0.010	1.010	0.663
	Negative	-0.026	0.975	0.620
2016 Election	Positive	-0.037	0.964	0.001***
	Negative	0.003	1.003	0.943
State Political Rep.	Positive	-0.181	0.834	0.084*

	Negative	-0.614	0.541	0.102
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Note: *OR* = odds ratio associated with the effect of a one standard deviation increase in the predictor.

* $p < .10$.

** $p < .05$.

*** $p < .01$.

Table 6 contains the results for RQ2: Are response and completion times related to demographic or political variables? The results of the negative binomial regression for Days until Completed identified six variables as significant in predicting the number of days a request would take to be completed. The two strongest significant variables were offices, or the body to which the request was submitted, and both Road departments and Sheriff's offices are significantly more likely to accrue more days in completing a request than the District Attorney's office, while the Maine Emergency Management Agency is likely to use almost half as many. Those counties with a higher percentage of Republican votes in the 2016 presidential election also showed a minimal but significant increase in the number of days to complete a request. Lower percentage of white population and the lower percentage of unemployment also increased the amount of time to complete a request. The test for Days until First Response found seven significant variables in predicting the number of days until first reply. Requests submitted in states in the Central South were significantly more likely to require more days until first response. Requests submitted to County Administration were likely to receive a response more quickly. The same trends for Race and Employment hold true in Days until First Response, with public bodies responding quicker in counties with higher percentages of white population and higher populations of employed individuals. In counties with higher percentages of religious adherents and more Republican representations, the model predicts a longer wait until first response.

Table 6. Results of negative binomial regressions ($N = 981, 1002$).

Variable	Days until completed			Days until first response		
	B	SE B	β	B	SE B	β
South	0.215	0.149	1.239	0.300	0.156	1.350*
Office/Dept.						
Co. Admin.	-0.100	0.152	0.905	-0.297	0.153	0.743*
Road	0.259	0.148	1.296*	-0.165	0.150	0.848
Sheriff	0.347	0.146	1.415**	-0.105	0.149	0.901
Emerg. Mgt.	-0.644	0.317	0.525**	-0.343	0.324	0.710
Population	<0.000	<0.000	1.000*	<0.000	<0.000	1.000***
Gender	0.021	0.021	1.021	0.026	0.020	1.027
Age	0.006	0.007	1.006	-0.003	0.008	0.997
Race	-0.019	0.021	0.981***	-0.024	0.005	0.977***
Language	-0.005	0.006	0.995	0.001	0.007	1.001
Income	<0.000	<0.000	1.000	<0.000	<0.000	1.000
Education	-0.005	0.007	0.995	-0.009	0.007	0.991
Employment	-0.035	0.021	0.966*	-0.041	0.022	0.960*
Religion	0.000	0.003	1.000	0.008	0.003	1.008**
Computer	-0.022	0.017	0.978	-0.013	0.017	0.987
Internet	0.015	0.011	1.015	0.007	0.011	1.007
2016 Election	0.010	0.005	1.010**	0.010	0.005	1.010**
State Political Rep.	0.039	0.049	1.040	0.038	0.051	1.039
Likelihood ratio χ^2	138.31***			281.05***		

Note: For the South variable, the non-southern states group was used as the baseline category. For Office/Department variables, District Attorney was used as the comparison category.

- * $p < .10$.
- ** $p < .05$.
- *** $p < .01$.

The final research question was RQ3: Is agency communication related to demographic or political variables? A Poisson regression was run to predict the number of ignored communications during the public records audit based on a range of demographic and political variables, and the results can be seen in Table 7. The model predicts significance for five variables with requests submitted to county administrations and roads departments being less likely to be ignored, and requests to counties with higher populations of white citizens less likely to be ignored. Requests in counties with more state Republican representation also experienced more ignored communications. However, being located in the Central South was the strongest predictor of non-responses, nearly doubling for counties in the region.

Table 7. Results of poisson regressions ($N = 1002$).

Variable	No response			Additional contacts		
	B	SE B	β	B	SE B	β
South	0.600	0.193	1.822***	0.682	0.153	1.977***
Office/Dept.						
Co. Admin.	-0.435	0.215	0.647**	-0.355	0.188	0.701*
Road	-0.346	0.210	0.707*	-0.157	0.184	0.855
Sheriff	-0.250	0.207	0.779	0.172	0.179	1.189
Emerg. Mgt.	-0.387	0.619	0.679	-0.531	0.535	0.588
Population	<0.000	<0.000	1.000	<0.000	<0.000	1.000
Gender	0.004	0.023	1.004	0.026	0.017	1.026
Age	-0.010	0.012	0.990	0.004	0.009	1.004
Race	-0.020	0.006	0.980***	-0.020	0.004	0.980***
Language	-0.007	0.010	0.993	-0.006	0.007	0.994
Income	<0.000	<0.000	1.000	<0.000	<0.000	1.000
Education	-0.015	0.010	0.985	0.008	0.008	0.992
Employment	-0.010	0.022	0.990	-0.011	0.018	0.989
Religion	0.004	0.003	1.004	0.000	0.003	1.000
Computer	-0.022	0.020	0.978	-0.011	0.016	0.989
Internet	0.008	0.011	1.008	0.007	0.009	1.007
2016 Election	0.040	0.074	1.041	0.013	0.006	1.013**
State Political Rep.	0.011	0.007	1.011*	-0.002	0.057	0.998
Likelihood ratio χ^2	300.76***			429.88***		

Note: For the South variable, the non-southern states group was used as the baseline category. For Office/Department variables, District Attorney was used as the comparison category.

- * $p < .10$.
- ** $p < .05$.
- *** $p < .01$.

A second Poisson regression was run to predict the number of additional contacts needed to pursue a request to completion based on the same demographic and political variables. Four variables were found to be significant predictors of increased number of necessary communications. Requests submitted to county administration

offices required fewer additional communications, while the same was true for requests to counties with higher proportions of white citizens. Requests to counties that voted Republican in the 2016 presidential election predicted an increase in follow-up communications. But, again, location in the Central South was again the strongest predictor of additional contacts, with requests submitted to counties in the region again requiring nearly twice as many additional communications.

6. Discussion

Worthy et al. (2017) has observed that passage of a FOI law is merely “the end of the beginning,” suggesting that much of the hard work in preserving and improving the law lies ahead (191). And while a good deal of this implementation and maintenance is to be determined by custodians, politicians and judges, much of the democratic force of these laws is drawn from public expectations. FOI laws are a hinderance to many public officials, if not threatening to lay bare the work product of a public official, then a laborious inconvenience for office personnel. These laws are unlikely to come off without sustained interest of the public. The study found there to be facets or specific articulations to these sociological forces, some more predictive of better or worse results than others. There is a growing body of research suggesting socio-political factors play a substantial role in the realization of FOI laws. The study was able to replicate findings in Spac et al.'s article and Cuillier's unpublished research. In particular, Cuillier's geographic findings were strongly corroborated in the present study. Across the five dependent variables, location in the Central South was the strongest and most consistent indicator of negative request results, proving significantly more likely to produce a failed request or a denial, less likely to produce a grant, significantly more likely to take longer in response, significantly more likely to be ignored and significantly more likely to require additional follow-up communications. Political ideology was another significant factor in the study, aligning with both Spac et al. and Cuillier's findings. In Cuillier's research, liberal ideology was a significant predictor of better compliance. Higher Republican representation among state politicians and higher Republican vote percentage in the 2016 presidential election were two of the more consistently significant variables, commonly predicting unfavorable request results. Both of the Republican variables showed they were significantly less likely to produce Positive Outcomes (than Neutral Outcomes). Counties with higher 2016 Republican voting were also predicted to take longer in First Response and Completing requests, along with predicting increased number of Additional Contacts. Republican state representation significantly predicted more No Responses.

It is difficult to responsibly extrapolate or draw definitive explanations as to the significance of conservative ideologies and poorer FOI outcomes and processes, but previous research has demonstrated that in the United States, Democratic politicians and the Democratic Party are much more likely to publicly support FOI efforts and general transparency (Wagner, in press). Republicans were much less likely to provide rhetorical support. Though the same study found that federal FOIA use and implementation was relatively similar (and generally favored Republicans) under different presidencies and political parties. A key may be in the motives and objectives of transparency efforts. There is a substantial base of research tying liberal ideology with both more FOI support and better outcomes. Cuillier and Pinkleton observe that those with liberal ideologies are more likely to support democratic principles, like free speech and civil liberties; ideals not far removed from transparent, accountable governance. Piotrowski & Van Ryzin found that self-identified liberals and conservatives sought different kinds of transparency. While the two different ideologies both expressed interest in transparency, conservatives were more interested in safety-related information, and liberals more focused on good governance and accessing government information on principle. General conceptions of U.S. Republicanism suggest the party and its politicians are invested in less government, which could manifest itself in more lightly staffed offices or fewer personnel dedicated to filling requests. The conservative principle of less governance can manifest in many ways beyond staffing and potentially influence the general countenance of government institutions and bodies vis a vis the public and willingness to participate in exercises divorced from

immediate governing actions. Further exploration of the relationship between political ideology and FOI would seem especially ripe for scholarship.

Spac et al., 2018 found that municipalities with a majority of ethnic minorities were less likely to respond to a request. Notably, Darch and Underwood (2005) observed that minority populations may experience increased obstacles in pursuing FOI requests, and the present study bears this out. The findings show that counties with larger non-white populations were more likely to ignore requests, required more follow-up communications and took longer to both respond and complete requests. Counties with a larger percentage of white population were also more likely than other counties to receive Positive Outcomes. Spac et al., 2018 posited language barriers as a potential explanation for the diminished results in Slovakian municipalities with higher concentrations of ethnic minorities, and that could certainly be the case in the United States, but it also points to more disconcerting possibilities with regards to priorities and transparency in counties that have larger non-white populations. Given the limitations of the present study, it would be irresponsible to make claims of racism as an explanation for the findings. Many of the counties with higher non-white populations also have non-white leadership, nullifying many generalizations. The study did control for other factors commonly conflated with race (including language and income). As with political ideology, there appears to be some growing evidence of a relationship between race, ethnicity and FOI, and as one of the study's primary findings there seems to be growing support for more nuanced exploration of what race means in processing FOI request and government administration generally. In the United States, it has been widely documented that minority populations fare significantly worse across a number of social indicators. It would seem that FOI processes are subject to many of these enduring problems, and scholars would be wise to continue exploring racial issues and their impact on minority experiences with government.

7. Conclusion

The findings of the study are limited. All FOI audits and field experiments are highly susceptible to the Hawthorne effect. Small, neighboring governments communicate with one another, and anecdotally, it was clear that many of the 1002 public bodies discussed the request from the university professor from another state. It is difficult to speculate whether such correspondence would improve or degrade FOI responses, but there is little doubt that coordinated approach experienced some contamination. And while the project sought as much sample variety as possible, the experiment was confined to one summer's worth of work, and these limits left the vast majority of the country out of reach. The study also suffers from sampling issues, which were driven primarily by resource and labor constraints. The requesting process is onerous, despite the considerable aid of the graduate class and graduate research assistants, nine states was an adequate benchmark given the time and resources. The nine chosen states are geographically and demographically fairly diverse, but the findings should be considered exploratory rather than empirical. The study also oversampled Wisconsin, the home state of the study, further affecting some of the generalizability of the study, though the descriptive statistics of the variables are fairly proximate to national averages.

However, the study represents a small step in rehabilitating FOI laws via identifying county conditions and environments that benefit and impede these laws. Continued research in this area should continue to refine the characteristics that hobble public records laws and circumstances that produce better outcomes. Certainly, more work needs to be done in determining what drives the results in the Central South. There is growing evidence that this region has remarkably poor FOI regimes. The Central South states presented two flavors of recalcitrance. Mississippi counties were often disinterested, difficult to contact and less likely to act unless prodded. Oklahoma counties were hostile and suspicious of requester identity and purpose. Many refused to email digital records, instead requiring requesters to pick them up in their rural Oklahoma offices. Further research into what is driving these results could prove beneficial in identifying more general FOI failures. Future

scholars should consider focusing their studies on the conditions in Central South states (and Sheriffs' Offices, the public body with the poorest results). Two areas seem especially ripe for further investigation, resources and custodians. While the study used median household income as a marker of county affluence, it is much too crude to capture any understanding of the resources committed to different public bodies or, more specifically, FOI implementation. While there has been strong work exploring the role, training and opinions of records custodians (Johnson, 2020; Kimball, 2003; Kimball, 2011; Kimball, 2012), there is room for further nuance in understanding commonalities across records custodians that produced Negative Outcomes, or the differences between custodians in the Central South and Sheriffs' Offices versus more compliant regions and departments. Such a proposal risks opening a Pandora's box of government administration factors and issues, but more clarity in understanding the training and attitudes of those most closely responsible for poor results would provide insight into FOI obstacles.

On the other hand, some geographies have produced superior outcomes, namely the state of Washington, and continued examination of their successes may also prove beneficial. A future study will use the dataset and analyze legal elements with hopes of identifying statutory and common law provisions that produce better or worse outcomes. At the heart of these successes and failures, though, is a culture of transparency, whether positive or negative, which seems to drive state-wide attitudes and compliance. The study sought to isolate factors in the culture of transparency, and confirmed some findings, like race and political ideology, across separate studies, but given the wide and varied results, there is still a good deal of work to be in better understanding these cultures.

The demographic and political leg of the audit analysis was aimed at determining cultural elements the consistently yield specific ends, and clearly culture plays a role in FOI implementation. Ratcheting up expectations and more rigorously enforcing public records laws would not doubt improve transparency. Though respected scholars like Pozen (2017) suggest the problems of FOI “are both more predictable and less tractable than is generally assumed” (p. 1138), these laws contain the actionable, individual rights to information that proactive disclosure mechanisms do not. This is the achievement, however messy, that cannot be replaced, because other transparency methods lack the ability, in the words of Judge Feinberg, “to pierce the veil of administrative secrecy and open agency action to the light of public scrutiny” (Rose v. Air Force, 1974, 263).

The very constitution of FOI laws promote animosity between requester and public body, and implementation of the laws is and always will be problematic. But hostility and intransigence are the byproduct of enforcing government transparency. Proactive disclosure would provide a less abrasive process but ultimately information of less consequence. It is vital that scholars continue to attend to the hard work of improving public records laws rather than turning to refurbished systems of the past, to a regime that failed the public through giving too much authority and discretion to the government. The motivations of Cross and the U.S. right to know movement were in allowing the government to make unilateral, uncontestable determinations on who was “responsible” and which citizens had “the public interest” at heart. Simple outcomes like those in Grimmelikhuisen et al. and Worthy et al. show that processes are improved by FOI laws. Further, they produce a climate of transparency that necessitates responsiveness to citizen inquiry. The threat of legal recourse is the animating force, but there is significant work to be done in identifying the factors the limit full compliance with the law.

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