

**IMPACT OF PRIVACY EXEMPTIONS IN OPEN RECORDS LAWS ON COMPUTER-ASSISTED
REPORTING**

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Data with personally identifying information are an invaluable tool for reporters nationwide. For beat reporters and veteran investigative journalists alike, information such as names, birth dates and addresses can make or break a story. But access to such information isn't guaranteed, with laws that restrict the public's access a regular source of frustration. And bills adding to those restrictions are introduced regularly.

"There are constant changes," Kenneth Bunting, director of the National Freedom of Information Coalition, said. "It seems every year we're playing defense against bad new exemptions in every state legislature across the country."

But short of getting into politics to change the law, what can journalists do to get the data they request? What are some techniques and methods that journalists have used to negotiate successfully for data?

In attempt to answer that question, I asked hundreds of reporters across the country to recount how they negotiated for data with personally identifying information. I emailed reporters a questionnaire with questions about a records request for data with personally identifying information of their choosing. About fifty responded, all with valuable lessons on how to get the data that you need.

All but five of the 47 respondents work for newspapers, with an average of 13 years of experience as journalists. Reporters told about requests mostly for state or local data, with 17 and 21 requests, respectively. Law enforcement was the most popular category with 13 requests, followed by education, with six. The most common kind of request was for employee salary data, although data requested ran the gamut from hunting licenses to fire department log data.

A general trend that emerged in the responses was that persistence, ingenuity, and good relationships with records custodians can produce positive results. Of the 40 respondents that either got the data they requested or a version of it 17 were initially denied their request. They succeeded using a number of techniques, including negotiation, compromise and finding other data sources.

Sometimes the only way to get the data you need is to find other avenues - often more time-consuming ones. Isaac Wolf of the Scripps Howard News Service wanted to see if owners of stores that had been banned from accepting food stamps were simply creating shell companies that bought the banned stores. To do that he requested a list of banned stores from the US Department of Agriculture, which gave him most of what he sought except for owner names.

Without the names, Wolf had no easy way to check whether people were using shell companies to be able to accept food stamps again. So instead of doing a comprehensive check on all banned stores, Wolf took a handful and tracked their ownership using corporate records, health inspections, liquor licenses, and more. Although time-consuming and less comprehensive, his method was sufficient to prove his hypothesis: Some people owning stores that had lost the right to participate in the food stamp program simply created new store names for the store and continued to participate in the program. The first story based on the data was published in February 2012, available here: <http://projects.scrippsnews.com/story/exclusive-store-owners-banned-taking-food-stamps-still-do/>.

A major project Chad Day of the Arkansas Democrat-Gazette worked on required similar creativity. Day and his colleagues wanted to find out how many Arkansans charged with murder or manslaughter had committed crimes while on parole. Virtually all personally identifying information for parolees was exempt in Arkansas, so Day and his colleagues requested a court database with case information for everyone in Arkansas charged with murder or manslaughter, which they then joined with a prison database. The court data allowed Chad to find parolees with pending criminal cases, as opposed to only those already convicted. It also had the arrest date for each offender, crucial for tracking parolee's path through the criminal justice system.

Among other things, the data revealed that an Arkansas Department of Community Correction policy released parolees off of state supervision after their sentence is finished, even if they had previously stopped reporting to their parole officers. Some of those parolees went on to commit murders and other crimes. Articles based on the data started running in the summer of 2013, one of which can be read here, with a subscription: <http://m.arkansasonline.com/news/2013/aug/11/parole-skipper-killer-2012-20130811/>.

Sometimes there is no way to get the data you need, in which case reporters might have to compromise. While Andy Boyle was an intern at the Arkansas Democrat-Gazette, he requested hunting license data from the Arkansas Department of Fish and Wildlife, but was denied licensee dates of birth. He asked for month and year of birth instead, which the agency decided he could have. That was sufficient for him to join that table with a table of felons. He discovered that there were convicted felons in Arkansas

with hunting licenses. The paper published Boyle's article based on the data in August 2008. The article is available on Boyle's website:

<http://www.andymboyle.com/portfolio/felons-hunting-with-guns-slip-past-state-law/>.

Informal agreements can also help reporters get personally identifying information. Linda Johnson of the Lexington World-Herald requested an employee salary database for everyone working at the University of Kentucky. Though employee race and gender are exempt in Kentucky, the university agreed to give the World-Herald employee gender and race information, only on the condition that the paper would only publish this information in aggregate.

In another example of compromise, while at the San Antonio News-Express Joe Yerardi requested a database of city employees' salaries over a number of years. He asked for the employee ID number as well to accurately track people as they changed positions or got married. But the city declined and said that employees used their ID numbers to buy gasoline, and the Texas Attorney General had already determined that those IDs were not a matter of public record. Yerardi then asked the city to generate a random and unique string for each employee, which they did. This allowed him to track employees through the system while allaying the city's fears that their ID numbers would be used to buy gasoline. He didn't end up using the data for any stories, though he did have it on hand if needed.

When such workarounds are impossible, the best thing to do can be to rely on data obtained before laws restricting access were passed. A respondent who didn't want to be named for fear of compromising his investigation was denied the dates of

birth of election candidates in his state. To get them, he joined an older table of voter records with a list of the names of election candidates.

Personally identifying information is an invaluable resource for journalists, and problems getting it aren't going away any time soon. Even though almost every records battle is unique, as is each agency and records custodian, there are numerous techniques and strategies which, in combination with persistence, allow journalists to keep fighting the good fight.