

>>[silence]

>> Good morning. Welcome to fun with for you in this and awaiting pick your presenter is Suzanne from North Dakota State University. Please join me in welcoming her.

>> [applause]

>> Hello and thank you for coming here. Good for hanging in there. Quick question. How many people here have made a FOIA request? How many of you have that request filled? How many of you are still waiting? Today I will go over a little bit about what FOIA is and some things you can do that could result in getting your request in a little bit faster. What is FOIA? I sometimes will mention it to my husband and he is like, wait, what. Freedom of Information Act. This gets its genesis in the administrative procedures act of 1946. That act was the result of FDR and he was creating a lot of additional federal agencies and there was concern that these agencies could become more powerful. So this was really an effort to give some consistency and some oversight. So has anybody ever taken a look at the Federal Register for comments? This is where that starts. It required that when an agency was going to have a change into the administrative rules that they would have to publish and get commentary from the public on that change. As you can see from the list, there's been a number of amendments that have been involved since. One of the big ones was to open Government act of 2017 and the FOIA improvement act of 2016. So what did open government act of 2007 do? It standardized the FOIA process. It also put the time limit on things. Issuing tracking numbers for any request will take longer than 10 days. Has anyone actually received a request in 10 days?

>> [speaker is off-mic]

>> That's good. That the state level request. Anyone else? I think I saw James.

>> They realized it wasn't their agency documents to the contacted the other agency who wanted a FOIA request. Just let it go. So if you have it in another agency, that's really helpful. This also requires that agencies have a FOIA liaison. So if there was an issue with getting a hold of something, you have somebody to actually talk to to negotiate with. It also refines what a record is. It requires agencies to specify the specific exemption for each deletion or redaction in a disclosed document. We will see that a little bit later. The 2006 amendment is one of the reasons why we have things like the CIA vault. It goes back a bit earlier than that. The FBI records and all of the FOIA libraries, something has requested at least three times and they are supposed to make those files publicly available which is also pretty good for the agencies because of something is a popular, you probably do not want to have to be digitize it. So that is one of the changes that happen 2016. It also asked for procedures for identifying records of general interest or use to the public that are appropriate for public disclosure and posting such records in a publicly accessible format so that is why we can get these PDFs and everything. What can you request through the freedom of information act request? Technically, currently existing agency records, and this is part of the language from the U.S. code paragraph 552, what are the exemptions now? There are exemptions to this. If it is something that could be an issue of national security, I think that's also a very vague description. I think a lot of things could possibly fall under that. We also have internal personal rules or practices of an agency and that is one of the areas that people sometimes will actually go to court for like you actually need to provide the content. Information that is prohibited from disclosure, you can't use FOIA to circumvent other laws. You can't get someone's medical records. Those would still be protected under HIPAA. Trade secrets or commercial financial information, so confidential material that would possibly also fall under another federal rule, but you can tell that people did not want their trade secrets possibly being exposed to be a FOIA. Privileged communication, those can be between agencies or it could be like a client attorney privilege issues of those are other ones you generally are not going to be able to get a hold of. And individual personal privacy, if this is something that could violate a person's personal privacy, often that information is not going to be disclosed. I would also hope that Social Security numbers out there would also probably be concealed with this as

well. Information compiled for law enforcement purposes, this could affect a court case, there are of course going to be exceptions to that like you can get the FBI files on Al Capone. So there's limitations. So sometimes these really do get challenged. Supervision of financial institutions is another exemption. I don't know how many people are concerned about that too much unless they are a financial institution. And my favorite exemption of all time, geologic information on Wells, what I suggest this actually falls more under possibly trade secrets. But this has never been brought up thus far in a challenge. So nobody is quite sure. I went through records of the Department of Defense and the description and explanation of FOIA, and they are like, we don't really know. This is the great mystery for geologic information on Wells. I'm betting it's related to things like fracking and oil extraction and that sort of thing. If anybody tries to get anything on an oil well and they say no, think you might have grounds to challenge it. What does this end up looking like? Just because something might be protected, that does not mean it will be the entire document. It might simply result in redactions to a document. The example here, anybody want to make a well guess and what this is? It's a page from the Mueller report. And if you took a relook at the document and I bet everyone in this room did, one of the things you will have noticed is in the redacted sections, it says why it was redacted. In this case, it was a digital document, went through, they included it in all the dark in space, and here we have an example of harm to an ongoing, investigative technique, and at least one here for personal privacy. What's interesting about this is that, in some cases, the personal privacy with regard to an investigation has been challenged and that did go to the Supreme Court which decided that if this was an informant in a court case, they could not expect that privacy so you cannot be an anonymous source in a case. At that has opened up more FOIA documents. You can also get something that looks like this, just page denied. That might just be one page out of a number. This was something that I got from a FOIA request that I made that ended up being something like 240 pages. They will tell you what was removed so they might say there were this many redactions for this purpose, these redactions, and in the summary, it also said one page completely denied. Honestly, had some other pages in their that they might as well have put this on because all they left me with was a letterhead and a date. But again, this was one page out of over 200. Just because some of that information might be, that doesn't mean your entire FOIA request will be denied. Also, I want to know what is on this page. I have a feeling this was all of the good stuff. What should you do before you go through the FOIA process? The first thing to do is to see if it's already available to check collections, to check all the reading rooms where the information where it may have been kept. I would go a step beyond that. Get as much information about the document as you can. If you can make a request from an agency, I found that it's going to go through a lot smoother. So you might get something within a few days versus a few months. But also, take a look at any individuals who might have been involved with that document. So for example, if you are looking for something that had been cemented to Congress, go ahead and see who might have been on that committee, who might have received material, and if they have given their papers to an archive somewhere because sometimes that process can go through a little quicker with the exception that if the person is still alive or if they have an embargo on the content, it is pretty common for Senator to have an embargo on an archive that you are just not going to be able to look at. I found myself in a fun situation where the individuals in his 90s in a nursing home and you can get permission to access something from an archive. He is not giving anyone permission to do anything. So I have to either wait for this individual I basically have to wait for this individual to pass on. And I feel like a bit of a vulture. Also, take a look at the research notes of people who may have published on the subject and see where they may have been pulling their information. They may have already put in a FOIA request for something and you may be able to contact them and get that same content without having to go through that entire process. I would also take a look at organizations for this also. They've already requested information or they may have been involved in the process and already have a file compiled on this, so be a little creative when you are trying to find some of this content. It may come from a completely different source. One of the

biggest things that you want to do is really identify exactly what you need and do your research before you even requested. If it's coming from a particular agency, I would start with that agency. I would also take a look at the records retention schedule. Has anyone taken a look at those? James, you might have well hope your hand up. If you take a look at the records retention schedule, you can save yourself a lot of time because it will give you an idea of how long an agency is holding onto this information. You don't want to start asking an agency and send it on to the national archive pick it would have been saved because some of these records, they only have to keep them for a few months or a few years and then they can go ahead and discard them. They are not considered to be something of archival import. I would definitely utilize our general schedule for this because it gives you a good basic idea of what would be kept, would not be kept. So if you are looking for contractor information, Natalie kept forcing amount of time before it is discarded. I would also take a look at the record schedule for the issuing agency. Sometimes they have a lot more detail that is provided and they go just a little more granular into the specific documents that they are going to keep or they are going to get rid of them. The general schedule is sort of a guideline and you will often see discard after 70 years or at the discretion of the agency. So there could be materials that they're holding on to for material purposes. Next after the agency, you would want to take a look at the national archives. So if you have not taken a look at what these schedules look like, this is an example. And this is on finance. And GRS general record schedule is here. So here we have how various schedules have affected cost properties are updated and there may have been an older version. Those older virgin versions are also helpful if you are looking for something because they would have it working according to the order schedule at the time that the material would have been moved onto the national archive or destroyed so it's good to take a look at some of those older versions of this and here we also have, this is available in Word, this is available in PDF and it's very general. So this is, I believe I got this from the USGS said this is an example of how an agency presents their record schedule on their own website and this is also financial management information and you are getting a lot more detail so we know that this is going to involve correspondences, subject, files, feeder reports, workload management, and assessment records. For disposal, these are listed as temporary records and destroyed when 3 years old, but longer attention, if necessary, for business, so that is sort of like caviar talk for a lot of these records and this is just when you could get rid of things sort of like when regionals are told they might be able to discuss some day, most of us are holding onto the papers of the president. We will also see on here there's also an example of official records held in the office of records so it also gives you an idea of who is going to be holding on to some of these records. Anybody excited gets cut -- anybody excited yet? This is the introduction I found for the Department of Interior, Department of record schedule. And again, this is going into a little more detail. So here are the files pertaining to the distribution operations of the administrative program and these are all of the specific program so the more granular you can get when you are looking at these documents, the better. In this will tell you what is kept at all, would have been sent to the national archives, is this over to be someone file folder the agency. So without FOIA request, when the first things you want to do is take a look at FOIA.gov. The last amendment in 2016 also required that there be a central place that people can go to to do a FOIA request. That is not 100% true. But there is a lot of agencies that participate in FOIA.gov that you can go there and put in requests to the system. I would also definitely check the FOIA site for the agency for more information. And you want to be as specific as possible. I like to think of this as an interlibrary loan request on steroids. That's especially since you might be looking for something more general around the whole subject. And often, you can get data about the particular item from the agency sites that will help you if you are requesting from FOIA. For example, when I put in request for an FBI file, I was able to find the file number two the FBI and that me putting a request in for the national archives a lot easier because I don't have somebody who won a high number plus I have to get someone to look through a bunch of boxes or contact me and try to get more information because we have a limited number of people and a lot of requests to get

through. So do your basics, your title, date, authors, subjects, any kind of document numbers. If you are looking for something that is more gray, there's still a possibility it will have some sort of document number with that and that will very much help. At also, I would reference resources like where have you already looked, where did you get this information. For example, this was a re-creation actually. So my 240 page request, I ended up a for it and that was partially because, I'm doing this is part of my research, so they charged me because I remember when I first did my request, they sent me quite a bit of information for free. I will get into that a little more so that is something you will want to make sure your students or your users know about. The Zen of waiting, how many of you work in universities? That's a lot of people raising hands. How many of your students have tried to get something through a FOIA request? How many got it when they actually needed it and before their paper was due.? I think a lot of students are not going to try this and I would not necessarily recommend it for somebody who has a paper due in a week. You want to go through all those other steps they really desperately need that information. FOIA is not going to be your friend. If this is a graduate student who knows that they are going to have some time or a faculty member, that's great. If this is a person who is not on a strict time limits, then FOIA is going to be okay. This is going to really have to do with how many staff you have. Always go with the agency. The reason I say this is I've had a very quick turnaround from the department of energy for our [indiscernible word] item but I was able to get within a few weeks my more complex requests from the national archives which took 2 1/2 years. I actually had to go back into my request and that's why these tracking numbers are so important to change my address information because I moved states while waiting for this to be processed. So one are the things that could happen that can also lead to a longer wait time? One of those is if they have to go through and do an assessment of the document. If it's something that's basically that should be in the public domain, it is going to be a lot faster than if some poor and delightful person at the national archives has to go through 240 pages and find every mention of someone's name or could this possibly be an investigation technique and then annotate all of those pages so it can be a long process. If you just need a memo that went through 3 years ago, it's going to be a much simpler process than if it is a large collection of materials or if there have to be any redactions. It's really easy to forget that you did a FOIA request. You might have already forgotten about it and some person is going through and they are still collecting that information for you. They considered it confidential because it wasn't accepted. Why was this rejected? Okay. So it might be out of scope as well. It could be they did not say that information. They threw away . could be they sent all the files to [indiscernible word] and maybe [indiscernible word] decided that those were not something that was worth saving in the archives. So they got rid of it. So there's a number of places where you might get denied simply because no one has that information anymore. I had a case where it was a document that had been sent in response to a congressional hearing. The hearing had already closed. And it had been finished before the letter was sent. With a keep in the collection is materials during the timeframe it was active. So there are also little places where things slip through the cracks, basically. The big reason you may not be able to get the information is they just do not have it and then you have to look in other places, other agencies or interested individuals who might have held onto it. It could fall also under an exclusion. So that whole list, all those people looking for geologic wells, getting the request denied, I would say this is not super common. Often people redact something and send you the content with those redactions. If you get a full on rejection, there is a process built in so you can contact those advocates that the agency and start a process of dialogue to see if you can get those through. That is where you would file an appeal against that rejection. A lot of these, if you go through [indiscernible word], to have an office of information services that is set up to help negotiate those denials and your last option would then be to go to court. What I have seen mostly is fairly recent information that agencies do not want to provide and frequently these are going to be from journalists and researchers who are trying to get a hold of that more current information and are

being denied for various reasons. Those denials at that point would be coming from the issuing agency, not the national archives. We flew through that. Any questions regarding FOIA?

>> [speaker is off-mic]

>> The question was why do I do [muffled audio] they do do a whole heck of a lot of FOIA request. I've done some for students. And in those cases also, it is part of a larger research consultation. We go over do you even want to get this content, how desperately do you want to get this content and are you willing to wait, so mostly with working with grad students, helping them to understand the whole process and getting the content, we've had pretty good luck with that because we are focusing on items that we think we can get in a timely manner. My other requests have been for personal research and I am looking at going back to grad school so I'm kind of doing some of my groundwork for my thesis and I know this takes a while and I want to make sure that I will be able to get the content that I need to even have this work done and I will already have it in hand before I start so I guess you could say I am researching for some of this information.

>> [speaker is off-mic]

>> Larry at San Diego asked --

>> [speaker is off-mic]

>> San Bernardino. I should know that. My mom went there. She wanted me to go there. So Larry asked, what was the question again?

>> [speaker is off-mic]

>> If I have ever used for you to try to get a fugitive document, yes, I have. And I found that that works. The process I went through four getting a fugitive first was to figure out what we were missing and usually this is something fairly local and it was more of a local EPA report that was just sent out to that area and a couple of libraries or it had to do with a change in administering code or something along those lines where information was put at the local library and after the issue is resolved, they just got rid of it. I used to be in Montana which I think might have the designation of the most in the country due to various issues so people are still wondering about some of the conditions that come up years and years later so what I would do is first try to go to see if they still had it and often the librarian at that agency would be able to point you to a particular field office or a particular individual who might have been working on that. So that would give me a lot of the data that I would need to then go through the process with the EPA in general to try to get a hold of some of those documents that were missing. In some cases, they just aren't there anymore and that can be difficult. And there are a lot of smaller documentation that might have only been a few pages or newsletter or something along those lines that was back from 1989 that just wasn't kept by anyone so I have fees with mixed results. Sometimes so it still has and sometimes they don't but it can help you with filling in gaps in collecting fugitives. If you are doing a local FOIA request, they will often collect some of that information so your name, contact information, what you are requesting, if that is the same thing at the federal level, I believe when you put in a FOIA request, that's also a public document. I do not, I have not looked at the retention schedule for request for that. I'm betting as long as the request is active, they have to keep that information. But it probably would be really interesting to see who has been doing research and who may have collected and if you are able to get a hold of that information which might be excluded because it is personally identifiable and might be an violation of the sea, but it would be helpful if you could find out and you could contact them and have a feeling they collected but you would not necessarily be able to access it. Any questions and chat or any other questions?

>> [speaker is off-mic]

>> Are FOIA that's maintained and made public?

>> I believe they are. You can find reports from various agencies that will talk about how many FOIA requests they have filled. Often, they are very proud of that information. We filled all of these. We have been working with people.

>> What do you do with the FOIA info once you receive it and are there ever restrictions on further sharing?

>> I believe there are not. Everything there would have been a restriction on has probably been redacted. And these are still public documents and that's why there's even --

>> [speaker is off-mic]

>> I think there are a few possibilities. He had an investigative journalist come in wondering why FOIA request were rejected and they asked very specific, they asked for a very specific meeting with the date and everything. I would bet that when you put in the request, they pull the file and it wasn't in their and it was misfiled because the person then turned around and did a request had somebody else do a request with a range of dates so all the meeting minutes for the number of dates, I am betting that they were able to get it because it just got put in the wrong place. It might also depend on who you spoke to at that time and if they were busy and there is a very human factor in the FOIA request so that could always have something to do with the overall process. Another thing that I found out is that if you request items for multiple agencies and multiple agencies happen, they may not redact the same information. So if you are really hoping to get some of that information, you might request multiple agencies and compare because he might have somebody who is a real stickler for taking out anything that looks like this and they are covering themselves and you might have some nails who is more liberal and when they don't redact so sometimes that can also be helpful as well. Questions, concerns, aspirations?

>> I think all is quiet in the chat as well. We are done early.

>> [applause]

>> Thank you.

>>[event concluded]

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