

Editor's Note The Business of Information

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Civic information is big business.

Government data fuels the economy, and where money is involved, so is power, and the desire to control that information and power.

It is no wonder that commercial interests comprise two-thirds or more of public records requests in the United States.¹ Public information matters to law firms, private investigators, contractors, title companies, and corporations seeking information about competitors.

Often the public interest in information outweighs the privacy interests of corporations, resulting in safer restaurants² and cleaner drinking water.³ Transparency well serves companies and their customers.

The reality is, though, corporate interests often use civic data for their own profits while hiding as much information about themselves, applying trade secrets or other privacy exemptions. Through the decades, the business lobby has worked hard to shape the U.S. Freedom of Information Act to its advantage.⁴

Case in point: The battle over details in the \$2 trillion Coronavirus Aid, Relief, and Economic Security (CARES) Act, passed in March to support ailing businesses in the United States. Initially, the Small Business Administration refused to provide details of the Paycheck Protection Program bailouts, but eventually relented following litigation by news organizations

¹ Numerous studies have found this through analyzing U.S. Freedom of Information logs, including Mark Tapscott & Nicole Taylor, *Few Journalists Use the Federal Freedom of Information Act*, THE HERITAGE FOUNDATION (2001), <http://www.heritage.org/Press/MediaCenter/FOIA.cfm>; *Frequent Filers: Businesses Make FOIA Their Business*, COALITION OF JOURNALISTS FOR OPEN GOVERNMENT (July 3, 2006), http://www.humanrightsinitiative.org/old/programs/ai/rfi/international/laws_papers/intl/businesses_make_foia_their_business.pdf; Derigan Silver, *The News Media and the FOIA*, 21 COMM. LAW & POL'Y 493 (2016), https://www.researchgate.net/publication/308394652_The_news_media_and_the_FOIA; and Margaret Kwoka, *FOIA Inc.*, 65 DUKE L.J. 1361 (2016), <https://scholarship.law.duke.edu/dlj/vol65/iss7/2/>.

² Barbara A. Almanza, Joseph Ismail, & Juline E. Mills, *The Impact of Publishing Foodservice Inspection Scores*, 5 J. FOODSERV. BUS. RES. 45 (2002).

³ Lori S. Benneer & Sheila M. Olmstead, *The Impacts of the "Right to Know": Information Disclosure and the Violation of Drinking Water Standards*, 56 J. ENVIRON. ECON. MANAG. 117 (2008).

⁴ Jeannine E. Relly & Carol B. Schwalbe, *How Business Lobby Networks Shaped the U.S. Freedom of Information Act: An Examination of 60 Years of Congressional Testimony*, 33 GOV. INFO. Q. 404 (2016).

and the Center for Public Integrity. However, most of the details remain hidden, as the federal government balks and stalls.⁵

This issue of the *Journal of Civic Information* features a timely article that illustrates the dilemma between the need to restrict information for business interests and the public's interest in civic information. Sabrina Conza focuses on the various ways corporations hide economic development information when negotiating incentive deals with state and local governments.

This isn't the first time someone has examined this issue. Aimee Edmondson and Charles Davis provided one of the first deep dives into the subject, in 2011.⁶ More recently, Daxton "Chip" Stewart and Amy Kristin Sanders built on that analysis for the first issue of the *Journal of Civic Information*.⁷ Also, this was the focus of a white paper just issued by the National Freedom of Information Coalition and Brechner Center for Freedom of Information.⁸

What is interesting about Conza's contribution is that she melded two types of research – legal analysis and interviews, a sort of scholar/journalist hybrid that we embrace in exploring issues of civic information. She points out rationales for secrecy and the benefits and drawbacks that can come with it, citing specific lessons learned by governments throughout the United States. While a case can be made for secrecy in some cases, Conza demonstrates that when it comes to information of importance to the public, even if involving private companies, ultimately transparency pays.

Most of the articles published in this journal's first year have followed standard research practices in legal analysis and social science, and we are proud of the authors' work. We welcome new approaches, as well, in research methodology and presentation, such as that used by Conza. The advantage of an open access online journal is that it is not constrained by the limitations of print, nor of established norms in research presentation. Also, we are not shackled by history or institutional structures that limit exploration. We encourage future submissions to build on this sense of experimentation, even including multimedia to effectively communicate research results. Civic information comes in many forms today, and so should its research.

In the meantime, we have excellent future issues in the works, including the next issue focusing exclusively on research pertaining to access to COVID-19 information. We had hoped that such an issue would be out of date by this winter, the pandemic perhaps long gone, but that is unfortunately not to be the case.

So, we forge on, researching and writing in home offices, continuing to explore the critical issues that affect citizens' ability to acquire information they need to self-govern. At any price.

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⁵ Nate Jones & Aaron Gregg, *SBA Seeks to Delay Release of Loan Records Following Court Order*, THE WASHINGTON POST (Nov. 17, 2020), <https://www.washingtonpost.com/business/2020/11/17/sba-loan-records/>.

⁶ Aimee Edmondson & Charles N. Davis, "Prisoners" of Private Industry: Economic Development and State Sunshine Laws, 16 COMM. LAW & POL'Y 317 (2011).

⁷ Daxton "Chip" Stewart & Amy Kristin Sanders, *Secrecy, Inc.: How Governments Use Trade Secrets, Purported Competitive Harm and Third-Party Interventions to Privatize Public Records*, 1(1) J. CIVIC INFO. 1, 3 (2019), which won first place in the 2019 National Freedom of Information Coalition freedom of information research competition.

⁸ Steve Miller, *Invisible Incentives: How Secrecy Impedes Evaluation and Accountability of Economic Development Subsidies*, NAT. FREEDOM OF INFO COALITION (November 2020), https://www.nfoic.org/sites/default/files/2020-11/Invisible_Incentives_Nov2020%282%29.pdf.