



# The Journal of Civic Information

Volume 5 | Number 1

March 2023

Journal homepage: <https://journals.flvc.org/civic/>

ISSN (online): 2641-970X

---

## Editor

David Cuillier, Ph.D.

*University of Arizona*

---

The Journal of Civic Information is an interdisciplinary peer-reviewed open-access online journal published by the Brechner Center for Freedom of Information through the Public Knowledge Project and is supported by the University of Florida College of Journalism and Communications.

## Contact:

David Cuillier, Ph.D.

[cuillier@arizona.edu](mailto:cuillier@arizona.edu)

DOI: <https://doi.org/10.32473/joci.5.1>

*Published under Creative Commons License CC BY-NC, Attribution NonCommercial 4.0 International.*

## Table of Contents

---

### Editor's Note

<b>Policing the Police: The Need for Law Enforcement Transparency</b> .....	<b>i-ii</b>
David Cuillier, University of Arizona	

### Social Science

<b>Deadly Details: Why Journalists Need Access to Government-Held Information on Homicide</b> .....	<b>1-16</b>
Amanda N. Marino Indiana University Maurer School of Law	

## JCI Editorial Board

---

Catherine Cameron, J.D., Stetson University College of Law

Alexa Capeloto, M.S., John Jay College of Criminal Justice

Erin Carroll, J.D., Georgetown University Law Center

Erin Coyle, Ph.D., Temple University Klein College of Media and Communication

Lisa DeLuca, M.L.S., M.P.A., Seton Hall University Libraries Data Services Department

Aimee Edmondson, Ph.D., Ohio University E.W. Scripps School of Journalism

Patrick File, Ph.D., University of Nevada-Reno Reynolds School of Journalism

Margaret Kwoka, J.D., The Ohio State University Moritz College of Law

Gerry Lanosga, Ph.D., Indiana University Media School

Chad Marzen, J.D., Florida State University College of Business

Gregory Michener, Ph.D., Fundação Getulio Vargas' Brazilian School of Public and Business Administration

Richard Peltz-Steele, J.D., University of Massachusetts School of Law

Suzanne Piotrowski, Ph.D., Rutgers University School of Public Affairs and Administration

Annelise Russell, Ph.D., University of Kentucky School of Public Policy and Administration

Ben Wasike, Ph.D., University of Texas - Rio Grande Valley Communication Department

## Editor's Note

### Policing the Police: The Need for Law Enforcement Transparency

David Cuillier, Ph.D., Editor, *University of Arizona* \*

When a former student shot his way into a St. Louis high school in October, injuring four and killing two, the public wanted to know what happened. Police and the school still haven't released video, or other records, claiming it's an "open investigation."<sup>1</sup>

Meanwhile, this month in Nashville, police released surveillance and body camera video the day after the shooting at Covenant School.<sup>2</sup> Not the case in September in Maine,<sup>3</sup> nor in Pennsylvania,<sup>4</sup> nor in Kansas.<sup>5</sup>

Mass killings and officer-involved shootings in the United States are all too common, but the ability for people to find out what happened? Not so much.

A patchwork of state public record laws pertaining to policy body camera footage,<sup>6</sup> inconsistent access to simple police reports and details of homicidal killings,<sup>7</sup> secrecy shrouding

---

<sup>1</sup> *St. Louis Police Refuse to Release CVPA Surveillance as Nashville Police Release Footage Hours After School Shooting*, KMOV-TV (Mar. 28, 2023), <https://www.kmov.com/2023/03/28/st-louis-police-refuse-release-cvpa-surveillance-nashville-police-release-footage-hours-after-school-shooting/>.

<sup>2</sup> *Nashville Police Release School Shooting Body-Camera Footage*, WALL STREET JOURNAL (Mar. 28, 2023), <https://www.wsj.com/video/nashville-police-release-school-shooting-body-camera-footage/8FE510A6-238C-4EDF-B811-6334BE325743.html>.

<sup>3</sup> Emily Duggan & Meg Robbins, *Access Denied: Authorities Refuse Records for Maine School Shooter Hoax Calls*, KENNEBEC JOURNAL (Mar. 4, 2023), <https://www.pressherald.com/2023/03/04/access-denied-authorities-refuse-to-release-records-for-maine-school-shooter-hoax-calls/>.

<sup>4</sup> *City Denies Open Records Request for Police Video of Gunner Shooting*, LEBTOWN (Aug. 18, 2022), <https://lebtown.com/2022/08/18/city-denies-open-records-request-for-police-video-of-gunner-shooting/>.

<sup>5</sup> Tim Hrenchir, *Topeka Attorney Won't Release Body Camera Video After Police Fired 34 Shots in Killing Man*, TOPEKA CAPITAL-JOURNAL (Feb. 14, 2023), <https://www.cjonline.com/story/news/local/2023/02/14/topeka-attorney-wont-release-body-camera-video-of-police-shooting/69900256007/>.

<sup>6</sup> See, for example, the Reporters Committee for Freedom of the Press collection of state legislation and police department policies regarding body camera footage access: <https://www.rcfp.org/resources/bodycams/>.

<sup>7</sup> Jack McElroy, *Uncovering the Police: Converging Trends Threaten Public Accountability of Local and State Law Enforcement Across the United States*, SEIGENTHALER REPORT (Nov. 2019), <https://www.mtsu.edu/seigenthaler/UncoveringThePolice.pdf>.

police misconduct,<sup>8</sup> and increasing secrecy of police actions at the federal level for the past 40 years,<sup>9</sup> leave a nation bewildered, and journalists left to seek out other sources for information, which may not have first-hand knowledge.

And it's not getting better, despite increasing calls for police transparency. Since the Movement for Black Lives in 2020, more states have made efforts to address police secrecy,<sup>10</sup> but legislatures continue to take steps to hide law enforcement from the public.<sup>11</sup>

Amanda N. Marino explores this threat to civic information in this issue's research article, "Deadly details: Why journalists need access to government-held information on homicide."

Marino looks closely at the case law and practice of releasing homicide records in Florida, Texas, Kentucky, and Michigan, pointing out the inconsistencies and possible paths for change.

This research follows in a line of studies published in the *Journal of Civic Information*, including documentation of the increasing secrecy pertaining to home addresses in law enforcement records,<sup>12</sup> secrecy in private prisons,<sup>13</sup> and access to information about campus police at private universities.<sup>14</sup>

There's a reason for the keen interest in this research. Of all government agencies, law enforcement has the power to take away your rights, your children, your assets, your liberty, and even your life. How justice is administered – whether at a traffic stop or in the courts – is of critical importance to people, particularly to the disenfranchised who often suffer the worst from its abuses.

With the continuation of mass killings, police misconduct, judicial injustice, and abuse of the incarcerated, research in law enforcement transparency will remain of critical importance.

Society depends on it.

DOI: 10.32473/joci.5.1.133121

\* Send correspondence about this article to David Cuillier, University of Arizona, [cuillier@arizona.edu](mailto:cuillier@arizona.edu).  
Published under Creative Commons License CC BY-NC, Attribution NonCommercial 4.0 International.

---

<sup>8</sup> See, for example, Bridget DuPey, Margaret B. Kwoka, & Christopher McMichael, *Access Denied: Colorado Law Enforcement Refuses Public Access to Records of Police Misconduct*, UNIVERSITY OF DENVER (2018), <https://www.law.du.edu/documents/news/Access-Denied-Kwoka.pdf>.

<sup>9</sup> A.Jay Wagner, *A Secret Police: The Lasting Impact of the 1986 FOIA Amendments*, 23 COMM. L. & POL'Y 4, 387-426 (2018).

<sup>10</sup> Tolulope Sogade, *Body-Worn Camera Footage Retention and Release: Developing an Intermediate Framework for Public Access in a New Affirmative Disclosure-Driven Transparency Movement*, 122 COLUMBIA L.R. 6, 1729-1767 (2022).

<sup>11</sup> See, Morgan Lee, *New Mexico Seeks Limits on Release of Police Body-Cam Video*, ASSOCIATED PRESS (Mar. 13, 2023), <https://www.lcsun-news.com/story/news/local/new-mexico/legislature/2023/03/13/new-mexico-seeks-limits-on-release-of-police-body-cam-video/70003780007/>; and Jamison Keefover, *Oklahoma Law Could Block Police Body Cam Footage From Being Seen Publicly*, KTUL-TV (Apr. 13, 2022), <https://ktul.com/news/local/oklahoma-law-could-block-police-body-cam-footage-from-being-seen-publicly>. The National Conference of State Legislatures tracks state legislation regarding police transparency: <https://www.ncsl.org/civil-and-criminal-justice/legislative-responses-for-policing-state-bill-tracking-database>.

<sup>12</sup> Jodie Gil, Robert A. Smith, Jr., & Kauther S. Badr, *Home Address Exemptions in State FOI Laws*, 4 J. CIVIC INFO. 4, 1-45 (2022), <https://journals.flvc.org/civic/article/view/132763/136617>.

<sup>13</sup> Alyssa M. Petroff, *Behind Bars: Secrecy in Arizona's Private Prisons' Labor Pool*, 4 J. CIVIC INFO. 2, 1-16 (2022), <https://journals.flvc.org/civic/article/view/132117/135749>.

<sup>14</sup> Josh Moore, *Out from the Curtains of Secrecy: Private University Police and State Open Records Laws*, 2 J. CIVIC INFO. 2, 1-21 (2020), <https://journals.flvc.org/civic/article/view/126522/126100>.



# The Journal of Civic Information

Volume 5 | Number 1

March 2023

Journal homepage: <https://journals.flvc.org/civic/>

ISSN (online): 2641-970X

## Deadly Details: Why Journalists Need Access to Government-Held Information on Homicide

Amanda N. Marino \*

### Article Information

Received: March 25, 2022

Accepted: Jan. 5, 2023

Published: March 31, 2023

### Keywords

Freedom of information  
Right to information  
Government transparency  
Police records

### Abstract

Freedom of information laws are vital to a free and functioning press, but their execution has mixed results, particularly when dealing with government-held information on homicide in the form of mass shootings and police killings of unarmed people of color. This study considers what FOI laws look like regarding access to homicide records, provides a case analysis of four states as examples of the varying types of FOI laws, and provides recommendations for how to improve both the laws and their execution nationwide for enhanced police transparency.

\* Amanda N. Marino, J.D., wrote this piece as a third-year law student at the Indiana University Maurer School of Law. She is a former journalist and second-place winner of the *Journal of Civic Information* 2021-22 Student Writing Competition. The author thanks Indiana University law Professor Joseph Tomain, J.D., and Media School Associate Professor Anthony Fargo, Ph.D., along with Senior Reporter at BuzzFeed News Melissa Segura for her time, Jeremiah Mickey, M.S., for countless rounds of proofreading, and Thomas J. McLaughlin, M.A., for his endless support. Please send correspondence about this article to [amandanmarino@gmail.com](mailto:amandanmarino@gmail.com).

*To cite in Bluebook:* Amanda N. Marino, *Deadly Details: Why Journalists Need Access to Government-Held Information on Homicide*, 5 J. CIVIC INFO. 1, 1-16 (2023).

*To cite in APA:* Marino, A. N. (2023). Deadly details: Why journalists need access to government-held information on homicide. *Journal of Civic Information*, 5(1), 1-16.

DOI: 10.32473/joci.5.1.133122

Published under Creative Commons License CC BY-NC, Attribution NonCommercial 4.0 International.

## Introduction

Melissa Segura,<sup>1</sup> senior reporter at BuzzFeed News and author of a forthcoming book about police misconduct, is intimately familiar with freedom of information (FOI) requests. Segura has filed myriad requests in Illinois, Georgia, California, Tennessee, New Mexico, and Texas, among others.<sup>2</sup> Records requests are vital to Segura's work because, as she explains it, "How do we hold [government officials] accountable if we can't actually see what they're doing?"

Segura's experiences with FOI requests are as varied as the locations in which they were filed. While she worked on decades of systematic police misconduct in Chicago, Segura said she knew exactly whom to call in what offices and how to reach officials willing to arbitrate record denials she sought to appeal. In Illinois, after those arbitrations, Segura said both she and the agencies walked away from the negotiation table satisfied. Segura accessed the information she needed, and agencies did not have to disclose documents they wanted to keep sealed.

Most recently, Segura has been investigating the death of 13-year-old Andre Hernandez, Jr., at the hands of a San Antonio police officer.<sup>3</sup> As Segura filed her requests in Texas, she was met with hurdles "astronomically heightened" by the involvement of a law enforcement officer and potential bad acts. Despite the San Antonio Police Department's policy of releasing body camera footage,<sup>4</sup> SAPD blocked Segura's request, citing both an ongoing investigation and Hernandez's status as a minor.

Unlike Illinois, Segura finds Texas' policies to be opaque and impossible to question. Segura's requests will, at times, be denied months after they are submitted, with no reference to which request was denied and conflicting legal citations explaining why she cannot have what she sought. Even more infuriating to Segura is that she does not know who is reviewing her requests, where, or when. Segura says she must give a specific request, but records custodians can send her a non-specific denial in response. Recently, when she called the Texas Office of the Attorney General Open Government Hotline,<sup>5</sup> the man who answered Segura's call simply said, "I'm sure law enforcement has a good reason to withhold the documents."

---

<sup>1</sup> To see some of Segura's most stirring work on police misconduct in Chicago, see Melissa Segura, *More Than 50 People Say This Cop Framed Them For Murder. Now Prosecutors Are Going To Review His Cases*, BUZZFEED NEWS (May 14, 2020), <https://www.buzzfeednews.com/article/melissasegura/guevara-cases-to-be-reviewed>; also, Melissa Segura, *Two More Men Convicted Of Murder Have Been Exonerated After 23 Years In Prison Due To Allegations Of Police Misconduct*, BUZZFEED NEWS (Jul. 20, 2022), <https://www.buzzfeednews.com/article/melissasegura/two-men-exonerated-murder-convictions-chicago-police>; Melissa Segura, *Seven People Who've Served Decades In Prison Had Their Murder Convictions Overturned Over Alleged Abuse By A Chicago Cop*, BUZZFEED NEWS (Aug. 9, 2022), <https://www.buzzfeednews.com/article/melissasegura/guevara-chicago-murder-exoneration>; and Melissa Segura, *A 37th Person Has Had Their Murder Conviction Overturned Based On Chicago Police Misconduct*, BUZZFEED NEWS (Aug. 16, 2022), <https://www.buzzfeednews.com/article/melissasegura/gamaliel-rivera-chicago-murder-conviction-exonerated>.

<sup>2</sup> Melissa Segura agreed to be interviewed by the author Dec. 10, 2022.

<sup>3</sup> Officer Stephen Ramos fatally shot Andre Hernandez, Jr., on June 3, 2022. Safia Samee Ali, *13-Year-Old Killed by San Antonio Police Was Not a Threat to Officers, Attorney Says*, NBC NEWS (June 13, 2022), <https://www.nbcnews.com/news/us-news/13-year-old-killed-san-antonio-police-was-not-threat-officers-attorney-rcna33323>.

<sup>4</sup> See *SAPD Open Data Initiative*, San Antonio Police Department, <https://www.sanantonio.gov/SAPD/SAPD-Open-Data-Initiative#286013912-section-100-preface>.

<sup>5</sup> *Texas Public Information Act*, Texas Department of Information Resources, <https://dir.texas.gov/site-policies/texas-public-information-act#:~:text=Please%20submit%20your%20request%3A&text=You%20may%20also%20contact%20the,%2D877%2D673%2D6839>.



Segura said she fears that lack of access leads to lack of governmental accountability and a less informed citizenry, “and then, democracy is screwed.” The Gun Violence Archive documented 648 mass shootings<sup>6</sup> in the United States in 2022, down from 690 in 2021 but still higher than all other previous years since 2014.<sup>7</sup> In 2020, seventy-nine percent of all murders in the U.S. involved a firearm.<sup>8</sup> The rate of gun murders has increased over the last several years, but, when accounting for population growth, does not set any grim new records.<sup>9</sup>

Similarly bleak, the *Washington Post* reports that 1,094 people had been shot and killed by police in 2022, with Black people being killed at twice the rate of White people based on their respective population sizes.<sup>10</sup> Segura notes that the case of George Floyd<sup>11</sup> illustrates why law enforcement offices need to practice both more transparency and more accountability. Segura noted that original police reports claimed Floyd had had a “medical emergency” — only true if being suffocated by an officer of the law can be described as a medical emergency.

America is squarely in the midst of a crisis of faith in its government and itself, with sixty-nine percent of Americans saying they believed the federal government intentionally withheld important information it could safely release and sixty-one percent saying the news media intentionally ignored stories that are important to the public.<sup>12</sup>

David Cuillier posited in 2004 that journalists may be able to serve their own needs for access by keeping their community engaged through coverage that “inspires and empowers” citizens to care about the work the press does for them.<sup>13</sup> Without their support, officials may be less inclined to comply with records requests. Rather than facing public outcry, they are only facing the frustration of an individual or news outlet in response to their denial.

In the case of mass shootings, government officials share fears of “copycat” violence,<sup>14</sup> a legitimate concern as documented by researchers at Arizona State University and Northeastern Illinois University;<sup>15</sup> concerns about protecting both victims’ privacy and the integrity of open

---

<sup>6</sup> The Gun Violence Archive defines a mass shooting as having “a minimum of four victims shot, either injured or killed, not including any shooter who may also have been killed or injured in the incident.” See Gun Violence Archive, “Explainer,” <https://www.gunviolencearchive.org/explainer>.

<sup>7</sup> Gun Violence Archive, “Mass Shootings in 2022,” <https://www.gunviolencearchive.org/past-tolls>.

<sup>8</sup> John Gramlich, *What the Data Says About Gun Deaths in the U.S.*, PEW RESEARCH CENTER (Feb. 3, 2022), <https://www.pewresearch.org/fact-tank/2022/02/03/what-the-data-says-about-gun-deaths-in-the-u-s/>.

<sup>9</sup> *Id.*

<sup>10</sup> Black people are killed at a rate of 6.0 per million per year, Hispanic people at a rate of 2.6 per million per year, and White people at 2.4 per million per year. “1,094 People Have Been Shot and Killed by Police in the Past 12 Months,” THE WASHINGTON POST (Dec. 5, 2022), <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>.

<sup>11</sup> George Floyd was killed by Minneapolis Officer Derek Chauvin on May 25, 2020. Adam Geller, Luis Andrea Henao, & Nomaan Merchant, “For George Floyd, a Complicated Life and Consequential Death,” THE ASSOCIATED PRESS (April 20, 2021), <https://apnews.com/article/george-floyd-profile-66163bbd94239afa16d706bd6479c613>.

<sup>12</sup> Andrew Perrin & Lee Rainie, “Key Findings About Americans’ Declining Trust in Government and Each Other,” PEW RESEARCH CENTER (Jul. 22, 2019), <https://www.pewresearch.org/fact-tank/2019/07/22/key-findings-about-americans-declining-trust-in-government-and-each-other/>.

<sup>13</sup> David Cuillier, *Access Attitudes: A Social Learning Approach to Examining Community Engagement and Support for Press Access to Government Records*, 85 JOURNALISM & MASS COMM’N. Q. 3, 551, 565 (Autumn 2008).

<sup>14</sup> Caitlin Dewey, *Experts Fear Copycats Would Mimic the Buffalo Mass Shooting. In Slovakia, One Man Did*, THE BUFFALO NEWS (Nov. 28, 2022), [https://buffalonews.com/news/local/crime-and-courts/experts-feared-copycats-would-mimic-the-buffalo-mass-shooting-in-slovakia-one-man-did/article\\_692916c2-65ef-11ed-b178-67863c02a39f.html](https://buffalonews.com/news/local/crime-and-courts/experts-feared-copycats-would-mimic-the-buffalo-mass-shooting-in-slovakia-one-man-did/article_692916c2-65ef-11ed-b178-67863c02a39f.html).

<sup>15</sup> Researchers reported that as many as thirty percent of violent attacks are set off by other attacks. Maggie Fox, *Mass Killings Inspire Copycats, Study Finds*, NBC NEWS (Jul. 2, 2015), <https://www.nbcnews.com/health/health-news/yes-mass-killings-inspire-copycats-study-finds-n386141>.



investigations;<sup>16</sup> and a common tendency to attempt to tamp down on salacious and exploitative reporting in consideration of survivors like those left behind after former Deputy White House Counsel Vincent W. Foster, Jr., died of a self-inflicted gunshot wound and was posthumously photographed.<sup>17</sup>

The balance between public access and respect for privacy hangs precariously between warring sides of freedom of information requests, especially when journalists intending to share information with the public at large are seeking sensitive government-held information on homicide. Research suggests that there is an inverse relationship between concern for invasion of their own privacy and support for access to government records,<sup>18</sup> meaning even the public is struggling to balance privacy and access. A blanket approach to the matter is decidedly impossible; no two instances of violence are identical, nor are any sets of public records, and each case requires thorough consideration. That consideration, though, is up against the clock, unable to take so long as to limit the public's ability to react to government failings and shortcoming either in protest or at the polls.

This paper will discuss journalists' rights to access information about the police through FOIA and other open records laws throughout the United States. Then, it will zero in on how Florida, Texas, Kentucky, and Michigan have handled their open records laws and requests regarding law enforcement, comparing them to each other to determine best practices. Finally, it will make suggestions and set goals for future open records laws, policies, and implementations.

## Press rights to information

The First Amendment of the United States Constitution promises that "Congress shall make no law . . . abridging the freedom . . . of the press,"<sup>19</sup> and though what exactly those press freedoms entail<sup>20</sup> (and who qualifies as the press)<sup>21</sup> is far from settled, this amendment makes clear that journalists have constitutionally recognized rights affecting how they are able to do their jobs.

The Supreme Court has not interpreted the First Amendment as implicitly creating a right for journalists to access public records, but they have made some allowances for a right to receive information and ideas under the First Amendment creating a "freedom to hear as well as a freedom to speak."<sup>22</sup> Access to government records is necessary if journalists are to function as the Founders intended, capable of speaking truth to matters of public import. Rather than broad strokes,

---

<sup>16</sup> Segura noted that her recent FOIA requests were denied because an investigation was opened, and that even Andre Hernandez, Jr.'s, mother was unable to access information despite Texas law permitting it.

<sup>17</sup> In 2004, the Supreme Court ruled in favor of survivor privacy, protecting "the personal privacy of citizens against the uncontrolled release of information compiled through the power of the state." *National Archives & Records Administration v. Favish*, 124 S. Ct. 1570, 1580 (2004); also *see*, "FOIA Post (2004): Supreme Court Rules for 'Survivor Privacy' in Favish," The United States Department of Justice (Apr. 8, 2004), <https://www.justice.gov/oip/blog/foia-post-2004-supreme-court-rules-survivor-privacy-favish>.

<sup>18</sup> David Cuillier, *Public Support for Press Access Declines As Personal Privacy Concerns Increase*, 25 *NEWSPAPER RSCH. J.* 4 95, 99 (Fall 2004).

<sup>19</sup> U.S. Const. Amend. 1.

<sup>20</sup> *See* Potter Stewart, *Or of the Press*, 26 *HASTINGS L.J.* 631 (1975).

<sup>21</sup> *See* Reporters Committee for Freedom of the Press, *In the age of new media, who counts as a journalist?* *NEWS MEDIA & L.* 27 (Winter 2011), <https://www.rcfp.org/journals/the-news-media-and-the-law-winter-2011/age-new-media-who-counts-jo/>.

<sup>22</sup> *Kleindienst v. Mandel*, 408 U.S. 753, 775 (1972).

however, narrower allowances like the right of reporters to attend criminal trials from *Richmond Newspapers, Inc. v. Virginia*, exist as well.<sup>23</sup>

The Supreme Court's track record with access to government-held facilities, information, and proceedings has seemingly swung back and forth on a pendulum of balancing interests, leading to a distinct lack of clarity and certainty in what access rights journalists possess.

Government organizations do not have carte blanche to withhold information from the press and the public, thanks in part to statutes like the federal Freedom of Information Act (FOIA). The act begins by saying that "[e]ach agency shall make available to the public information as follows" and goes on to list dozens of categories of information journalists and citizens can request via online forms from a majority of federal government agencies.<sup>24</sup> Each state and the District of Columbia has its own public records statute, most of which are largely based on the federal statute.<sup>25</sup> Though the right to access public records is not a constitutional one, the right has been suggested by and derived from common law and case law.<sup>26</sup> After all, FOIA was enacted to open the administrative process to the "scrutiny of the press and the general public."<sup>27</sup>

Despite how these laws may suggest that there is strong legal support for access to information, not all states implement their rules as written. Noncompliance is detrimental to citizens because "law enforcement records can almost act as a window that shows how an agency conducts itself [and] ... to help ensure the citizenry that law enforcement agencies are performing the duties the citizenry requires of them."<sup>28</sup> For years, some, but importantly not all, records custodians have been unable or unwilling to turn over requested documents, sometimes for lack of knowledge of their responsibilities and sometimes for an unwillingness to participate in the process due to disagreements with the policy.<sup>29</sup> In 2003, Michele Bush Kimball found that "public records laws in the United States do not guarantee public access to nonexempted government information, especially in law enforcement agencies."<sup>30</sup> With as much as technology has changed in the last nineteen years, this fact has not changed much at all.

Researchers in Colorado discovered that law enforcement agencies in the state were not inclined to tend toward full and frank disclosure when it came to internal affairs files.<sup>31</sup> Cases that resulted in settlements for the victims of police violence, those that would generally garner more media attention and arguably be of more import to the public, were not easily accessible.<sup>32</sup>

A nationwide audit of ten states in 2020 revealed similar disparities between different states, counties, and individual government organizations in terms of time to complete the FOI

---

<sup>23</sup> "Free speech carries with it some freedom to listen." 448 U.S. 555, 576 (1980).

<sup>24</sup> 5 U.S.C.S. § 552(a) (1966).

<sup>25</sup> David E. Pozen, *Freedom of Information Beyond the Freedom of Information Act*, 165 U. PA. L. REV. 1097, 1098–99 (2017). For a listing of all state-level freedom of information laws, see National Freedom of Information Coalition, *State Freedom of Information Laws*, <https://www.nfoic.org/coalitions/state-foiresources/state-freedom-of-information-laws>.

<sup>26</sup> Monica C.M. Leahy, *Proof Supporting Disclosure Under State Freedom of Information Acts*, 132 AM. JUR. PROOF OF FACTS 3D 1 (2013).

<sup>27</sup> *Id.*

<sup>28</sup> Michele Bush Kimball, *Law Enforcement Records Custodians' Decision-Making Behaviors in Response to Florida's Public Records Law*, 8 COMM. L. & POL'Y 313, 317 (2003).

<sup>29</sup> *Id.* at 315.

<sup>30</sup> *Id.* at 350.

<sup>31</sup> Bridget DuPey, Margaret B. Kwoka, & Christopher McMichael, *Access Denied: Colorado Law Enforcement Refuses Public Access to Records of Police Misconduct*, University of Denver Sturm College of Law 4 (Feb. 2018), <https://www.law.du.edu/documents/news/Access-Denied-Kwoka.pdf>.

<sup>32</sup> *Id.* at 8.

request, likelihood of meeting the request deadline, and receiving positive outcomes for the requests.<sup>33</sup>

What remains to be seen, and what can be further developed, is what best practices are for open records laws nationwide, and whether it is a matter of better legislation, better implementation, or both that would remedy some of the issues repeatedly keeping both journalists and the public in the dark. The disparities between and among different laws suggest we have not yet arrived at a uniform “right way” to facilitate the request for and receipt of information.

State FOI laws, sometimes called sunshine laws or open records laws, vary dramatically in their provisions for, and the resulting experiences of, journalists.<sup>34</sup> We will now consider Florida’s<sup>35</sup>, Texas’,<sup>36</sup> Kentucky’s,<sup>37</sup> and Michigan’s<sup>38</sup> statutes as a survey of what FOI laws presently look like for journalists trying to report on tragedies, as well as what those laws should look like in the future.

## Florida

Florida’s public records laws are known for their relative openness and accessibility, as evidenced by the birth of “Florida Man,”<sup>39</sup> an internet caricature stemming from frequently bizarre crime stories featuring residents of the Sunshine State. Florida law enforcement agencies regularly make documents, photos, and video collected in the course of their work available to the media,<sup>40</sup> allowing them access to stories about the wildly absurd and the profoundly disturbed. Florida’s robust public records statutes<sup>41</sup> begin by explaining that “[i]t is the policy of this state that all state,

---

<sup>33</sup> See A. Jay Wagner, *Piercing the Veil: Examining Demographic and Political Variables in State FOI Law Administration*, 38 GOV’T INFO. Q. 1, 6-8 (2021).

<sup>34</sup> National Association of Counties, *Open Records Laws: A State by State Report* (December 2010).

<sup>35</sup> Seventeen people were murdered and seventeen more were injured at Marjorie Stoneman Douglas High School on Feb. 14, 2018. Max Matza, *Parkland Shooting: Should School Officer be Jailed for Child Neglect?* BBC (Jun. 6, 2019), <https://www.bbc.com/news/world-us-canada-48503823>.

<sup>36</sup> Ten people were murdered at Santa Fe High School on May 18, 2018. Laura Isensee, “*She Was Just Erased:*” *Widower Reflects One Year After The Shooting At Santa Fe High School*, HOUSTON PUB. MEDIA (May 15, 2019), <https://www.houstonpublicmedia.org/articles/news/in-depth/2019/05/15/333068/she-was-just-erased-widower-reflects-one-year-after-the-shooting-at-santa-fe-high-school/>. At the time of the original drafting of this paper, the Oxford High School shooting was the most recent mass shooting event. Since then, dozens more have occurred, including when 21 people, mostly children, were murdered in a shooting at Robb Elementary School in Uvalde, Texas. As major developments are still coming out of Uvalde, what comes next for press access there remains to be seen. “*What to Know About the School Shooting in Uvalde, Texas,*” THE NEW YORK TIMES (Jun. 7, 2022), <https://www.nytimes.com/article/uvalde-texas-school-shooting.html>.

<sup>37</sup> Breonna Taylor was shot and killed by police in her home on Mar. 13, 2020. AJ Willingham, *Breonna Taylor Would Have Been 27 Today. Here’s Where Her Case Stands*, CNN (Jun. 5, 2020), <https://www.cnn.com/2020/06/05/us/breonna-taylor-birthday-charges-arrests-case-trnd/index.html>.

<sup>38</sup> Four people were murdered and seven people were injured at Oxford High School on Nov. 30, 2021. Livia Albeck-Ripka & Sophie Kasakove, *What We Know About the Michigan High School Shooting*, THE NEW YORK TIMES (Dec. 3, 2021), <https://www.nytimes.com/article/oxford-school-shooting-michigan.html>. All four states selected were chosen for high profile mass shootings and police violence that occurred therein in the last five years, as well as for distinct features of their FOI laws that will be outlined for comparison.

<sup>39</sup> Gil Smart, *Why is ‘Florida Man’ a Thing, When ‘Pennsylvania Man’ (or Iowa Man or Ohio Man) Isn’t?* TREASURE COAST PALM (Mar. 25, 2019), <https://www.tcpalm.com/story/opinion/editorials/2019/03/25/heres-why-florida-man-thing/3266020002/>.

<sup>40</sup> *Id.*

<sup>41</sup> FLA. STAT. ANN. §§ 119.01–119.19 (LexisNexis, Lexis Advance through all 2020 general legislation).

county, and municipal records are open for personal inspection and copying by any person.”<sup>42</sup> According to the National Freedom of Information Coalition, the Florida Sunshine Law has a broad definition of public records, stating that public records include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material “made or received pursuant to law to ordinance or in connection with the transaction of official business by any agency.”<sup>43</sup>

Though exemptions to Florida public records laws exist,<sup>44</sup> they pale in comparison to the pro-First Amendment press access the rest of the statute creates. Even more powerful than the breadth of Florida’s definition of public record is its versatility. Florida public records can be requested by any person without a stated reason for their request, and the records can be used any way a person elects to use them.<sup>45</sup>

Florida’s public records laws have been the subject of multiple court cases, and those cases have frequently resulted in opinions favoring disclosure and prioritizing press access rights. Two cases in particular<sup>46</sup> focus on the concept of good cause and whether the media has shown it in such a way as to require disclosure. The first case, *State Attorney’s Office of the Seventeenth Judicial Circuit & Sch. Bd. v. CNN, Inc.*, was the result of conflict about access to surveillance footage from Marjory Stoneman Douglas High School in Broward County, Florida. The Feb. 14, 2018, recordings contained information about and visual records from what became commonly known as the Parkland shooting,<sup>47</sup> a mass shooting at a high school that ended with 17 people dead and 17 more injured by a single gunman who was also a former student.

Two weeks after the shooting, multiple media organizations petitioned for access to the video recordings captured by the school’s surveillance cameras, citing the Florida Public Records Act in their filing.<sup>48</sup> The Broward County Sheriff’s Office had seized the school board computers that housed the footage and refused media requests to release it.<sup>49</sup> In response to the media’s petition, Broward County Sheriff’s Office claimed the footage was exempt from disclosure under Fla. Stat. Ann. § 119.071(3)(a).<sup>50</sup> This exception permits officials not to release “security or [fire safety] system plans” to the public, even though they are classified as public records.<sup>51</sup> The media’s petition cited “‘extreme public interest’ in ‘the response of law enforcement officers during the shooting and immediately thereafter.’”<sup>52</sup> There was a specific question of what Officer Scot

---

<sup>42</sup> *Id.* at §119.01.

<sup>43</sup> *Florida FOIA Laws*, National Freedom of Information Coalition, <https://www.nfoic.org/coalitions/state-foi-resources/florida-foia-laws>.

<sup>44</sup> “Some exemptions that are included are federal records that the federal government has designated as non-public, personal e-mails sent from or received by city employees using a government computer, some ‘drafts’ or ‘notes’ are also exempt.” *Id.* See also FLA. STAT. ANN. §§ 119.07, 119.071, 119.0711, 119.0712, and 119.0713 (LexisNexis, Lexis Advance through all 2020 general legislation).

<sup>45</sup> National Freedom of Information Coalition, *supra* note 43.

<sup>46</sup> *State Attorney’s Office of the Seventeenth Judicial Circuit & Sch. Bd. v. CNN, Inc.*, 251 So. 3d 205 (Fla. Dist. Ct. App. 2018); *Fla. Dep’t of Corr. v. Miami Herald Media Co.*, 278 So. 3d 786 (Fla. Dist. Ct. App. 2019).

<sup>47</sup> Christal Hayes & Emily Bohatch, ‘I’m Sick to My Stomach’: 17 Dead in Florida High School Shooting; Former Student in Custody, USA TODAY (Feb. 15, 2018), <https://www.usatoday.com/story/news/2018/02/14/injuries-reported-after-shooting-florida-high-school/338217002/>.

<sup>48</sup> *State Attorney’s Office of the Seventeenth Judicial Circuit & Sch. Bd. v. CNN, Inc.*, 251 So. 3d 205, 208 (Fla. Dist. Ct. App. 2018).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> FLA. STAT. ANN. § 119.071(3)(a) (LexisNexis, Lexis Advance through all 2020 general legislation).

<sup>52</sup> *Supra* note 48.

Peterson was doing during the shooting, and whether he should face charges of child neglect for what appeared to be his inaction during the crisis.<sup>53</sup>

As proceedings carried on, the media filed a new petition, asking for “‘full disclosure’ showing law enforcement’s response so the public could ‘evaluate and determine whether more could have, or should have, been done.’”<sup>54</sup> These requests are an example of journalists seeking information that the public can use to analyze the actions and inactions of government officials during a crisis, empowering them to respond with support or displeasure as they see fit.

The focus of the case became whether the media had shown good cause for disclosure of the security footage,<sup>55</sup> a listed statutory reason for the information to be eligible for their viewing and usage. The Fourth District Court of Appeals of Florida affirmed the circuit court’s decision, directing disclosure of the video footage as public records over the objection of the school board and the state.<sup>56</sup> The decision went on to say that journalists proved that the footage would reveal the response of law enforcement personnel and other first responders during and immediately after the shooting; “[t]he [m]edia showed the need for the public to actually *witness* the events as they unfolded because the narrative provided by ‘the authorities’ [was] confusing and [had] shifted and changed over time.”<sup>57</sup>

The court found good cause because “the footage reveal[ed] the conduct of public servants ‘discharging their assigned duties and responsibilities,’”<sup>58</sup> cementing the notion that the public had a right to be informed, especially when official statements left vital questions unanswered about decisions made during and after the shooting.

A similar battle over the establishment of good cause was waged in *Fla. Dep’t of Corr. v. Miami Herald Media Co.*,<sup>59</sup> where Florida’s Department of Corrections appealed a trial court order finding that the *Miami Herald* had established good cause to grant the newspaper access to requested video recordings.<sup>60</sup>

In 2015, a *Miami Herald* reporter requested specific video footage from two locations via public records requests.<sup>61</sup> Both requests were denied by the Department of Corrections, which claimed the footage fell under the security plan exemption of Fla. Stat. Ann. § 119.071(3)(a), and the *Miami Herald* filed a complaint seeking injunctive and mandamus relief.<sup>62</sup> A trial court reviewed the footage *in camera* and determined that it did fall under the security plan exemption of the Florida Public Records Law.<sup>63</sup>

The legal battle continued, with the *Miami Herald* filing a motion for reconsideration under the then-recent amendments<sup>64</sup> providing good cause exceptions. The *Herald* argued that “its goal of gathering information regarding inmate treatment at state prisons and reporting it to the public

---

<sup>53</sup> Matza, *supra* note 35.

<sup>54</sup> *Supra* note 48 at 209.

<sup>55</sup> “A showing of good cause before a court of competent jurisdiction” allows for information made confidential and exempt by FLA. STAT. ANN. § 119.071(3) to be disclosed. *See* FLA. STAT. ANN. § 119.071(3)(a)(3)(d) (LexisNexis, Lexis Advance through all 2020 general legislation).

<sup>56</sup> *Supra* note 48 at 207.

<sup>57</sup> *Id.* at 214–15. Emphasis in original.

<sup>58</sup> *Id.* at 215.

<sup>59</sup> 278 So. 3d 786 (Fla. Dist. Ct. App. 2019).

<sup>60</sup> *Id.* at 787.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 787–88.

<sup>63</sup> The videos were found to be exempt from public disclosure upon this review. *Id.* at 788.

<sup>64</sup> *See* FLA. STAT. ANN. § 119.071(3)(a)(3)(d) (LexisNexis, Lexis Advance through all 2020 general legislation) and FLA. STAT. ANN. § 281.301(2)(d) (LexisNexis, Lexis Advance through all 2020 general legislation).

constituted good cause.”<sup>65</sup> The motion was granted in 2017, and in 2018 the trial court issued a final order stating that the *Herald* no longer wanted copies of the security footage, but that they had shown good cause to satisfy the exception to the public disclosure exemption laws; the trial court ruled that the Department of Corrections was legally obligated to provide reporters access to the videos.<sup>66</sup>

On appeal, the First District Court of Appeals of Florida reversed the trial courts findings, saying the trial court “abused its discretion in light of the [*Miami Herald*’s] admission that it no longer needed the footage.”<sup>67</sup> The fact that the *Miami Herald* reporter had moved on from reporting on the incident and no longer needed the footage highlights the problem with extreme delays in court proceedings, though there is no way to determine how this matter would have been resolved if the news was still in urgent need of publication. Waiting for an appeal to work its way through the legal system can be a months-long or even years-long ordeal, hamstringing the timeliness of any reporting. The court continued in its holding, explaining that “[r]ecords related to the physical security of a [s]tate correctional facility are exempt from disclosure under Florida’s public records and safety and security services laws.”<sup>68</sup>

The opinion also laid out what was meant by good cause, and how that definition was evolving. The court concluded that the Legislature had intended a common law approach to the phrase “good cause” where a meaning “‘emerges over time, on a case-by-case basis, and courts arrive at a desirable equilibrium between the competing needs of disclosure and secrecy of government records.’”<sup>69</sup> The court never actually decided if good cause had been shown in the original case because of the *Miami Herald*’s admission at the time of the appeal that it no longer needed the footage from the original 2015 requests, saying “[t]he [*Miami Herald*] extinguished any claim to good cause when it unambiguously renounced its need for the video footage.”<sup>70</sup> This case did open the door to further discussions, though. For example, if, in the future, a prisoner died in the custody of the Florida Department of Corrections, the *Miami Herald* could take up the same issue and fight the same battle to prove good cause for the disclosure of information and videos, starting with the presumption from this opinion that the requested information is exempt from disclosure. It would be difficult to say how a court would respond to the assertion of what was deemed an invalid ruling, though.

Though Florida’s public records statute is not without flaws, its general openness both in text and in interpretation is beneficial to an informed public and a free press. As we discuss Texas, Kentucky, and Michigan, we will see that not every state has been so forthcoming with information from its government offices.

---

<sup>65</sup> Fla. Dep’t of Corr. v. Miami Herald Media Co., 278 So. 3d 786, 788 (Fla. Dist. Ct. App. 2019).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 787.

<sup>68</sup> *Id.* at 788.

<sup>69</sup> Fla. Dep’t of Corr. v. Miami Herald Media Co., 278 So. 3d 786, 789 (Fla. Dist. Ct. App. 2019) (quoting State Attorney’s Office of the Seventeenth Judicial Circuit & Sch. Bd. v. CNN, Inc., 251 So. 3d 205, 214 (Fla. Dist. Ct. App. 2018)).

<sup>70</sup> *Id.* at 790.



## Texas

Before Texas formalized its public records law,<sup>71</sup> ability to access public records was left to the discretion of the custodian of those records.<sup>72</sup> Any person can request public information now, and there is no law on how records can be used.<sup>73</sup> Though fewer cases exist in Texas than in Florida, one particular case outlines where Texas currently stands on press access to government records.

In 2008, the *Austin Chronicle* requested the City of Austin release to them a “[t]rue and entire copy of [the] entire police investigative report created in connection with the investigation into Frances and Daniel Keller of Fran’s Daycare.”<sup>74</sup> When their request was denied, the *Austin Chronicle* filed a writ of mandamus to compel the city to disclose the police reports, including information about the alleged sexual assault of a child, that child’s name, the child’s mother’s name, and name of the investigating officer.<sup>75</sup> After their petition was denied, the *Austin Chronicle* appealed, arguing that the evidence presented did not support finding the report was exempt from disclosure under the Texas Public Information Act.<sup>76</sup>

It was undisputed that the identity of the alleged victim was a public record,<sup>77</sup> but whether the information in the police report was a matter of public record was still being debated in the courts. While the Austin Police Department and the City of Austin sought to rely on an opinion letter from the attorney general, the court found that this letter “failed to address whether the information in the [Austin Police Department] report was already a matter of public record.”<sup>78</sup> This failure, coupled with the fact that much of the information in the report in question had been made public through other means, led the court to conclude that no evidence had been presented suggesting the report contained private information that should not have been disclosed to the reporter.<sup>79</sup>

The court here reversed the denial of the *Austin Chronicle*’s writ of mandamus and held that the newspaper was entitled to the disclosure of the report.<sup>80</sup> While this can generally be viewed as a victory for press freedoms in Texas, it should be noted that Texas case law is severely lacking in terms of clarity on public safety exceptions as they relate to the press. Thus, it remains to be seen how this type of request would be managed.

On May 18, 2018, a shooter killed ten people at Santa Fe High School in Texas.<sup>81</sup> Steve Perkins, husband of Glenda Ann Perkins, who was shot and killed that day, has said he still does not know how exactly his wife died or what her final moments were like.<sup>82</sup> This remained the case

<sup>71</sup> TEX. GOV’T CODE ANN. § 552 (LexisNexis, Lexis Advance through the 2019 Regular Session, 86th Legislature, and the 2019 election results).

<sup>72</sup> *Texas FOIA Laws*, National Freedom of Information Coalition, <https://www.nfoic.org/texas-foia-laws/>.

<sup>73</sup> *Id.*

<sup>74</sup> *Austin Chronicle Corp. v. City of Austin*, No. 03-08-00596-CV, 2009 Tex. App. LEXIS 1381 (Tex. App. Feb. 24, 2009).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> At this time in Texas, the trial surrounding this case was open to the public and the witnesses were testifying under their own names. *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> Isensee, *supra* note 36.

<sup>82</sup> *Id.* The author also heard Steve Perkins and a reporter with whom he has been working discuss the struggle to access this information at the 25th Annual ABA Forum on Communications Law in Feb. 2020.



in 2022 when the shooter still had not faced trial because Texas law limits what information the public can see before trial.<sup>83</sup> Perkins said the district attorney has claimed to be withholding the information to preserve the sanctity of a trial for the shooter and prevent any change of venue issues, but one cannot overlook the possibility of a discussion like that which took place in Florida courts over video footage from the Parkland shooting. Victims' families want to know what happened during their loved ones' final moments; it is now a question of whether Texas is willing to tell them.

Texas' public information laws appear to focus on privacy protection, but it has not been explored by the courts as a public safety exception tool. It is not clear how the Texas courts would rule in a case citing press freedoms against a claim of public safety concerns at this time, but the question may be asked again soon. Since the shooting at Robb Elementary School in Uvalde, Texas, on May 24, 2022, questions have been raised about law enforcement's decision to delay entry into the school during valuable minutes in which lives may have been saved.<sup>84</sup> We have been watching information trickle out, including disturbing video with the caption "The sound of children screaming has been removed,"<sup>85</sup> and the gravity of what we have seen may lead some to wonder what remains hidden. From the outside, while it appears law enforcement has been more forthcoming with details in the timeline of events,<sup>86</sup> there are also indicators that press access to what seems to be a public building is not being prioritized.<sup>87</sup>

## Kentucky<sup>88</sup>

The Kentucky Open Records Act<sup>89</sup> has several of the same features found in its Florida and Texas counterparts. A public record is defined as "all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency."<sup>90</sup> Once again, anybody can request public records without a statement of purpose,<sup>91</sup> but unique to Kentucky is a department's explicit right to reject a record claim if "the application

<sup>83</sup> Robert Arnold, *Nearly 4 Years Later, Families Still Waiting for Accused Santa Fe Gunman Dimitrios Pagortzis to Face Trial*, KPRC-TV (Feb. 11, 2022), <https://www.click2houston.com/news/investigates/2022/01/26/nearly-4-years-later-families-still-waiting-for-accused-santa-fe-gunman-dimitrios-pagortzis-to-face-trial/>.

<sup>84</sup> James Barragán & Zach Despart, *Waiting for the Keys, Unable to Break Down Doors: Uvalde Schools Police Chief Defends Delay in Confronting Gunman*, THE TEXAS TRIBUNE (Jun. 9, 2022), <https://www.texastribune.org/2022/06/09/uvalde-chief-pete-arredondo-interview/>.

<sup>85</sup> Lawrence O'Donnell, *Police Fear the AR-15*, MSNBC (Jul. 13, 2022), <https://www.msnbc.com/the-last-word/watch/lawrence-police-fear-the-ar-15-144022597562>.

<sup>86</sup> Barragán & Despart, *supra* note 84.

<sup>87</sup> Timothy Fanning, *Video: Law Enforcement Officials Say Journalists Will Be Charged for Being on Uvalde CISD Property*, HOUSTON CHRONICLE (Jun. 1, 2022), [https://www.houstonchronicle.com/news/houston-texas/texas/article/Uvalde-school-shooting-police-property-17212599.php?utm\\_source=twitter.com&utm\\_medium=referral&utm\\_campaign=socialflow](https://www.houstonchronicle.com/news/houston-texas/texas/article/Uvalde-school-shooting-police-property-17212599.php?utm_source=twitter.com&utm_medium=referral&utm_campaign=socialflow).

<sup>88</sup> Though the focal case in Kentucky is the murder of Breonna Taylor, we have had to take a broader look at public records laws in Kentucky due to a lack of established case law dealing with police safety versus press freedoms. The author acknowledges that a disproportionate number of unarmed people of color are killed by police, as reflected in a study published in 2020. See Jeffrey A. Fagan & Alexis D. Campbell, *Race and Reasonableness in Police Killings*, COLUMBIA LAW SCHOOL SCHOLARSHIP ARCHIVE (2020), [https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3660&context=faculty\\_scholarship](https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3660&context=faculty_scholarship).

<sup>89</sup> KY. REV. STAT. §§ 61.870 – 61.884 (LexisNexis, Lexis Advance through Ch.128 of the 2020 Regular Session).

<sup>90</sup> *Kentucky FOIA Laws*, National Freedom of Information Coalition, <https://www.nfoic.org/kentucky-foia-laws/>.

<sup>91</sup> *Id.*

places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency.”<sup>92</sup> This element of Kentucky’s law provides officials and agencies ostensibly with broader discretion to reject media requests than either the Florida or the Texas law.

Section 61.872(6) of the Kentucky Open Records Act has been argued in court with a result in favor of press freedoms. In 2020, in *Commonwealth v. Courier Journal*,<sup>93</sup> a reporter from the *Courier Journal* sent an open records request to the Kentucky State Police for information from their Uniform Citation File.<sup>94</sup> The state police denied the request under Ky. Rev. Stat. § 61.872(6), claiming the request would impose an unreasonable burden on the agency because they “did not have a mechanism in place to generate an electronic database, report or listing containing only the information subject to public disclosure.”<sup>95</sup> In essence, they had compiled millions of pieces data and claimed to have no reasonable way to disclose just the data points that were public record.

After a repeated request and a repeated denial, the *Courier Journal* reporter appealed to the attorney general<sup>96</sup> because the attorney general reviews denials of requests to inspect public records based on Kentucky statute.<sup>97</sup> After requesting more information, the attorney general concluded that the police had violated the Open Records Act because they had not fulfilled their duty to separate exempt material pursuant to Ky. Rev. Stat. § 61.878(4).<sup>98</sup>

The Kentucky State Police appealed this decision to the circuit court, arguing that the millions of entries that needed to have certain private information redacted from them would result in an undertaking too costly and too time-consuming to be justified.<sup>99</sup> The Franklin Circuit Court affirmed the attorney general’s decision, saying in part that “evidence does not exist, in accordance with statutes and Kentucky case law, that this burden outweighs the agency’s duty to produce public records to requestors. Agency inefficiency cannot restrict the citizenry’s liberty interest in accessing information to promote government transparency among all levels of state government.”<sup>100</sup>

The Kentucky State Police appealed this decision, but to no avail. The opinion of the Franklin Circuit Court was affirmed, and the Kentucky State Police were found to have violated the Open Records Act by failing to produce their entire Uniform Citation File database with appropriate redactions to the *Courier Journal* reporter who requested it.<sup>101</sup> The time and manpower police claimed would be necessary to comply with the request were not sufficient to provide clear and convincing evidence that there was an unreasonable burden such that they could refuse to comply with the request under Kentucky law.<sup>102</sup>

It remains to be seen how Kentucky would handle a request that government officials said posed a public safety risk because the focus of Kentucky law is on the burden a request places on a government department or office. Questions of how easily journalists could access information and recordings relating to police use of deadly force remain unanswered because, though the

---

<sup>92</sup> KY. REV. STAT. § 61.872(6) (LexisNexis, Lexis Advance through Ch.128 of the 2020 Regular Session).

<sup>93</sup> 601 S.W. 3d 501 (Ky. Ct. App. 2020).

<sup>94</sup> *Id.* at 503.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 504.

<sup>97</sup> KY. REV. STAT. 61.880(2) (LexisNexis, Lexis Advance through Ch. 128 of the 2020 Regular Session).

<sup>98</sup> *Commonwealth v. Courier Journal*, 601 S.W. 3d 501, 504 (Ky. Ct. App. 2020).

<sup>99</sup> *Id.* at 504–05.

<sup>100</sup> *Id.* at 505.

<sup>101</sup> *Id.* at 502.

<sup>102</sup> *Id.* at 506.

statute suggests information should be free and open, that same statute has not been clearly addressed in court to date. There is an argument to be made, though, that disclosing information from one singular case, like the murder of Breonna Taylor,<sup>103</sup> would not be demonstrably unreasonable and would have to be disclosed.

## Michigan

Michigan's Freedom of Information Act<sup>104</sup> has only been explored in a limited capacity,<sup>105</sup> but its courts do not clearly err on the side of disclosure or exemption, operating mostly on an ad hoc basis.

When faced with a request for video and names of police officers involved in an assault on a handcuffed man, the city argued – and the circuit court found – that the information requested was exempt under both FOIA and Michigan's Freedom of Information Act.<sup>106</sup> Michigan's Court of Appeals disagreed, though, finding that the video and the names of officers were not exempt from disclosure<sup>107</sup> to the attorney trying to make his case. In contrast, when the *Detroit Free Press* sued for what they called a Michigan Freedom of Information Act violation,<sup>108</sup> the Michigan Court of Appeals determined that those records were exempt, saying that those legislators with weapons permits were exercising a right that every Michigan citizen has and thus that the information was not related to their government work.<sup>109</sup>

On the last day of November 2021, a student at Oxford High School in Michigan shot and killed four people in the middle of a school day.<sup>110</sup> The incident garnered national media attention and is unique in that the alleged shooter's parents<sup>111</sup> have been charged for their role in furnishing him with the firearm used in the killing.<sup>112</sup> With reports coming out of seeming warning signs ignored by the suspect's parents but voiced by school officials, it remains to be seen what requests for information the media will make to help tell the story of what happened and if and how it could be avoided in the future.

---

<sup>103</sup> Recently, the Department of Justice released a report confirming that “Louisville police have engaged in a pattern of violating constitutional rights and discrimination against the Black community.” Taylor’s murder prompted the investigation that resulted in these findings. Dylan Lovan, *After Breonna Taylor Death, Feds Find Police Discrimination*, SENTINEL & ENTERPRISE (Mar. 8, 2023), <https://www.sentinelandenterprise.com/2023/03/08/after-breonna-taylor-death-feds-find-police-discrimination/>.

<sup>104</sup> MICH. COMP. LAWS ANN. §15.231 et seq.

<sup>105</sup> Research indicates few cases have gone to court specifically regarding press freedoms and rights to access.

<sup>106</sup> See *Rataj v. City of Romulus*, 306 Mich. App. 735 (2014).

<sup>107</sup> Home address, birthdates, and phone number of those officers and the department’s internal investigation reports and personnel records pertaining to the incident were exempt. *Id.* at 756.

<sup>108</sup> The reporter requested records relating to Michigan state legislators with concealed weapons permits, and the request was denied. *Detroit Free Press, Inc. v. Dep’t of State Police*, 243 Mich. App. 218, 221 (2000).

<sup>109</sup> *Id.* at 228-29.

<sup>110</sup> Albeck-Ripka & Kasakove, *supra* note 38.

<sup>111</sup> A preliminary hearing for Jennifer and James Crumbley began in February 2022. Gus Burns, *Court Hearing for Accused Oxford High School Shooter’s Parents Centers on Demons, Voices, Guns, Infidelity*, MLIVE (Feb. 8, 2022).

<sup>112</sup> Jennifer and James Crumbley are facing involuntary manslaughter charges because they reportedly gifted the alleged shooter the murder weapon for Christmas. Melissa Chan, *Parents of School Shooters are Rarely Held Responsible. This Case is Different*, TIME (Dec. 8, 2021), <https://time.com/6126647/crumbley-parents-charges/>.

## Discussion

Post-FOIA America has seen increasingly defined laws and processes for requesting information from government officials.<sup>113</sup> Key improvements include the newly implemented presumption of openness and disclosure along with more detailed statutory language and clearer guidelines.<sup>114</sup> FOIA, “both a simple ability and a grand right,” still is stymied by vague language like that found in the federal act’s Exemption 7, creating a freedom to exclude information from being accessed by journalists.<sup>115</sup>

Though each state is entitled to its own rule of law, the overwhelming disparities between states, counties, and even agencies in their practice of responding to records requests is inherently problematic. People like Melissa Segura, working nationwide to inform the public about what practices their government officials engage in on their behalf, are subjected to an unpredictable and undesirable labyrinth of potential responses to records requests that may simply hinge on who is in the office when the request is lodged.

Segura outlined, and this author supports, what she believes, as a working professional in the field, statutes need to include and practices need to consist of for open records laws to accomplish what they set out to do.

First, full transparency is essential to the process. Segura explained that she had no idea how her denials are reviewed, who is reviewing them, or when they are reviewed. Months of waiting, vague responses to requests, and an inability to find a representative with whom she can seek answers or lodge complaints essentially makes the process useless and negates its entire mission of FOI laws. To remedy this, Segura suggests the implementation of a public portal or another specific place where people can submit requests, follow their progress, and communicate with the decisionmakers reviewing their requests.<sup>116</sup> Detailed, specific processes for appealing denials that are clearly outlined are also a must. Segura explained that, in Texas in particular, the state may have a reason to deny her request, and she may have a response to it, but without procedural knowledge, she has no way to lodge that response and engage in further dialogue. She contrasts this with the Illinois<sup>117</sup> process that allowed her to work with officials to come to an amicable solution for everybody involved. That kind of process is what all government officials should strive for rather than the broken, un navigable process Segura is currently battling.

Texas manifests a lack of transparency in more ways than one, with Segura sharing her shock and displeasure that lawmakers in Texas looking to access the confidential case file from the Uvalde shooting were forced to sign non-disclosure agreements with the Department of Public

---

<sup>113</sup> David Cuillier, *The People’s Right to Know: Comparing Harold L. Cross’ Pre-FOIA World to Post-FOIA Today*, 21 COMM. L. & POL’Y 4, 433, 458 (2016).

<sup>114</sup> *Id.*

<sup>115</sup> A. Jay Wagner, *A Secret Police: The Lasting Impact of the 1986 FOIA Amendments*, 23 COMM. L. & POL’Y 4 387, 426 (2018).

<sup>116</sup> The author has encountered one FOI portal for an Illinois police department, but she was not working in a journalistic capacity at the time of her access and thus cannot say if all requests are treated the same.

<sup>117</sup> The 2010 update to the Illinois Freedom of Information Act resulted in mandates that each public agency nominate an officer to be the official keeper of public records. This official must take an online training course established by the attorney general, a high and exacting standard. *Illinois FOIA Laws*, National Freedom of Information Coalition, <https://www.nfoic.org/illinois-foia-laws/>.

Safety before they could even see the records.<sup>118</sup> Opaqueness like this is bound to leave the public with more questions than answers, working to increase distrust of the processes in place. We need more transparency, not less.

Concerns about misuse of sensitive, damning, and at times, triggering information are entirely valid. The pendulum of access can easily swing too far in the opposite direction, permitting such things as sensitive images of children's corpses to be paraded in front of a leering public, either seeking some macabre gratification or unwillingly subjected to death and devastation. Special consideration must be given to families, friends, and survivors who do not deserve to be unduly accosted by these graphic images of what may have been the worst day of their lives.

More access requires more responsibility, meaning that if the government is not going to restrict journalists, journalists are going to need to act responsibly. That said, Segura suggests that we should default to the assumption that people will act responsibly rather than engaging in paternalistic censorship to offset potential devastation. Respectful reporting can occur with minimal retraumatization of survivors and an emotionally exhausted public. Access could lead to serving curious voyeurs, but it should not if journalists behave professionally and ethically.

Second, Segura notes that state attorneys general need to back the law in their respective states. Attorneys general especially need clear, consistent procedures for appeal after denial of a request. Closing the door on reporters does nothing but leave them to assume the worst when, in reality, the truth may be much less nefarious. Regardless, the government cannot simply self-select what its constituency is permitted to be privy to in its work. Their power comes from the people, and as such it is the people to whom they should report.

Finally, and perhaps most challenging, Segura suggested the time may have come for agencies and bad actors to receive financial penalties for noncompliance with the FOI law under which they operate. Since public outcry and the desire to comply with what the legislature has dictated is the law is not enough to motivate certain officials, it may come down to a financial burden being placed on them to engage appropriately. Currently, FOI requests can be ignored or rejected, leading to a burden not on the offenders, but on journalists who must take them to court, a costly and time-consuming process that may still end in failure while obstructing journalists' efforts.

Segura shared her worry that access and disclosure are not the default reactions to fear and confusion, prompting even more mistrust in a society that faces more and more the possibility of misleading and fraudulent information. Limited records allow for the proliferation of fake news,<sup>119</sup> but more access means more truth. "Sunlight disinfects," Segura said.

## Conclusion

Federal and state governments all have their own FOI laws, implemented inconsistently. Journalists are vehicles for the citizenry to benefit from, and a free press is meant to disseminate information, allowing for active participation in a functioning democracy. Government leaders

---

<sup>118</sup> The NDAs have been described as a "highly unusual extension of secrecy." Tony Plohetski, *Texas Lawmakers Signed NDAs to Obtain Uvalde Shooting Case File*, KVUE, <https://www.kvue.com/article/news/special-reports/uvalde-school-shooting/uvalde-shooting-texas-lawmakers-nda/269-5d43e735-37b3-4a93-b656-f829ef6c05bb>.

<sup>119</sup> *What is Fake News?* Center for Information Technology & Society, University of California Santa Barbara, <https://www.cits.ucsb.edu/fake-news/what-is-fake-news>.

cannot claim to be acting on behalf of their constituents while also not allowing those same people to understand their processes and the thoughts behind their actions.

Information should only be withheld in the rarest of circumstances where clearly outlined, legitimate risks exist. Florida case law appears to be on track to develop a useful definition for a public safety exception. Texas case law on the matter does not seem to exist yet, but its statutes are written in such a way that new case law, particularly any lawsuits that may come from the Santa Fe High School or Robb Elementary School shootings, could lead to answers about what a public safety exception really is. Kentucky law is focused on the government burden in preparing the information rather than its importance to the community, so it may still be some time before they can make positive changes to their law via court decisions. Michigan's state law is interpreted on a case-by-case basis, revealing little about its future.

Information is vital currency in a democracy, and press freedoms are the tools we use to spread and share it. Even the deadliest details of a government's actions and inactions need to be shared with the public, and it is of the utmost importance that this is done while the public can still vote their approval or disapproval of those actions. Ideally, we would never have to posit how much information people should be accessing about the death and devastation thrust upon a community, simultaneously small and global, by hate and hurt, but for now, this is our reality.