



## Freedom of Information Act Requests: Frequently Asked Questions

Several public health departments have recently sought guidance about freedom of information requests from the tobacco industry, its representatives, and opponents to tobacco control policy change. Such requests appear to be an industry tactic designed, at least in part, to delay or interfere with tobacco control efforts.<sup>1</sup> In fact, the U.S. Centers for Disease Control and Prevention (CDC) concluded that “the demands of the tobacco industry on the staff of [California’s tobacco control program] for responding to requests for documents amount to a tax-payer subsidy of the industry as it tries to protect its interests at the expense of the health of California.”<sup>2</sup>

While freedom of information requests can seem overwhelming and intimidating, they do not have to disrupt tobacco control efforts. This fact sheet provides public health departments with a brief overview of their obligations under freedom of information laws. It explains the importance of having policies and procedures in place so departments can effectively respond to requests, while minimizing interference with the staff’s daily duties of protecting and promoting public health.

### **Q. What are freedom of information laws?**

**A.** Freedom of information refers to legislation at both the federal and state levels that is intended to promote openness and transparency in government. The federal Freedom of Information Act (“FOIA”) was enacted in 1966. Since then, all fifty states have adopted their own state-level counterparts to the FOIA. Such state statutes may also be called freedom of information acts, but are often referred to as public records, open records, right-to-know, or “sunshine” laws. The federal FOIA applies to all federal agencies while state freedom of information laws apply to state and local government agencies.

Generally, freedom of information laws give citizens the right to obtain information from governmental bodies. More specifically, freedom of information laws provide that any person (including non-state residents) may request access to agency documents and other public records, except to the extent that such records (or portions of them) are protected from public disclosure by a specific exception.

**Q. What information must government agencies disclose under freedom of information laws?**

- A.** Agencies must disclose all records that are requested, unless information contained in those records is protected by an exception in the law. Exceptions exist to protect important interests, such as personal privacy and privileged communications. Generally, freedom of information laws do not require agencies to conduct research for the requester, analyze data, answer written questions, or create records that do not already exist in response to a request.

The federal FOIA also requires that federal agencies automatically disclose certain information, including (1) final agency opinions; (2) administrative staff manuals; (3) specific policy statements affecting the public; and (4) records that are the subject of frequent requests.<sup>3</sup>

Exceptions and disclosure requirements vary by jurisdiction, so you should become familiar with your state and local (if one exists) laws' specific requirements.

**Q. Are there other legal obligations to consider when responding to freedom of information requests?**

- A.** Yes. The law under which the FOIA request was submitted likely contains a deadline when the response is due. Agencies should respond within the relevant time period, or they can be subject to penalties. The applicable law may also outline the types of available responses, such as: (1) provide the requested records; (2) ask for an extension to gather the records; or (3) deny the request, if a legal basis for denial exists. Again, the time frame and actual response required will depend on the specific requirements of each state's freedom of information law. Thus, public health department employees should be aware of their obligations under their jurisdictions' statutes, and, if in doubt, consult with legal counsel.

Other important factors to consider when responding to freedom of information requests include: (1) how much an agency is allowed to charge for providing documents; (2) whether the state government provides an ombudsman to answer questions and handle disputes over public records requests;<sup>4</sup> (3) whether the document requestor must give a reason or stated purpose for seeking disclosure of the documents; and (4) how the records will be used.

**Q. What can public health departments do to be better prepared to respond to freedom of information requests?**

- A.** Public health departments should follow standard business practices of good recordkeeping, organization, and document retention. This includes the management of electronic records as well, such as email communications. Measures should be in place to ensure compliance with internal policies and procedures, including fixed, periodic oversight or random audits.

Departments might also find it useful to develop standard operating procedures for handling freedom of information requests. For example, a public health department could post information on its website stipulating that requests be in writing, addressed to a specific person in the department responsible for receiving and processing such requests, and outlining other relevant information or frequently asked questions by requesters.<sup>5</sup> Public health departments can also adopt rules and regulations setting forth their process for responding to freedom of information requests, which provide procedures, instructions, timelines, and forms for obtaining health department records.<sup>6</sup> Consultation with legal counsel is advisable in developing and implementing such a plan.

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<sup>1</sup> Stella Aguinaga & Stanton A. Glantz, *The Use of Public Records Acts to Interfere With Tobacco Control*, 4 TOBACCO CONTROL 222 (1995).

<sup>2</sup> U.S. Ctrs. for Disease Control & Prevention (CDC), *Structural Evaluation, California's Proposition 99-Funded Tobacco Control Program* (1994).

<sup>3</sup> 5 U.S.C. § 552(a)(2).

<sup>4</sup> Generally speaking, an ombudsman is a neutral dispute resolver. Several states have Ombudsman offices that operate as independent agencies, subject to statutory guidelines, which constituents can seek out if they feel they have been treated unfairly by a state agency, department, board or commission. In some states, Ombudsman's Offices are statutorily authorized to receive and investigate complaints and resolve disputes over access to public records. *See, e.g.*, ARIZ. REV. STAT. § 41-1376.

<sup>5</sup> *See, e.g.*, Lawrence County Health Dep't, FOIA: Freedom of Information Act, <http://www.lchealth.com/FOIA.htm> (last visited June 29, 2011).

<sup>6</sup> *See, e.g.*, Coles County Health Dep't Rules and Regulations Implementing the Illinois Freedom of Information Act, available at <http://www.co.coles.il.us/cchd/docs/FOI%20rules%20&%20regs.pdf>.