

USING YOUR STATE'S OPEN RECORDS LAW FOR IMMIGRATION ADVOCACY

A GUIDE FOR COMMUNITY ORGANIZERS AND
IMMIGRANT RIGHTS' ADVOCATES

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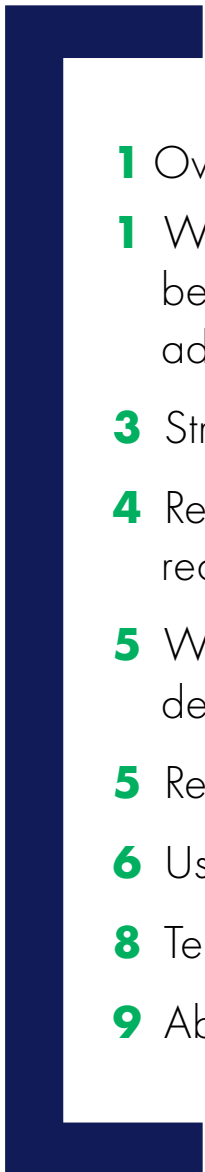
ACKNOWLEDGMENTS

The Catholic Legal Immigration Network, Inc. would like to thank our Board of Directors for their support of our State and Local Project and this resource. Special thanks, as well, to our funders, including the Ford Foundation and the Catholic Campaign for Human Development. Thanks, also, to our partners for their contributions to this guide.

This resource is not legal advice. It recommends ways you can use public information for advocacy on issues that affect immigrants in your locality.

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OVERVIEW

As immigrant rights advocates, you play a vital role in ensuring that your community is inclusive, prosperous and safe, and that your local leaders are prioritizing the needs of all residents. Government transparency is one way to achieve these civic goals. All 50 states and the District of Columbia have open records laws — sometimes called “Public Information Act” or “Public Records Act” — that provide public access to a variety of records held by state and local governments. Records may include emails, statistics, videos, policies, staff manuals, and other kinds of information that affect the public. Your state’s open records laws can help you locate critical information, such as how your local government functions and how local resources are used. Information you obtain can be useful for public education campaigns, empowering your communities to hold local officials accountable and defending your most vulnerable neighbors.

WHAT TYPES OF INFORMATION WOULD BE HELPFUL TO IMMIGRANT RIGHTS ADVOCATES?

A variety of records held by your state or local government can inform your advocacy on immigration-related issues and show their effect on your neighbors, clients and community well-being. Some examples are:

Information about the treatment of immigrant children in schools;

For example:

- School placement policies;
- Policies and procedures concerning students’ access to school programs and support services to make learning and integration less difficult;
- Government policies and procedures related to compliance with anti-discrimination and privacy laws.
- School Board meeting minutes and materials.

Also helpful are policies related to immigrants’ access to medical services at a public hospital or other health care facility, including language access, the quality of care they receive, as well as their expectation of privacy in their medical records.

TIP

Some health care centers’ policies and guidelines regarding patient care, including non-English-speaking patients, are available online.

Local law enforcement records can show police practices that affect your community.

Demographic information about the people who are subject to local police contact, including race, religion, gender, age group and national origin may show racial profiling and other unlawful conduct by your local officials.

For example:

- Records of all arrests by an agency in a specified year, including the location of arrest, race, ethnicity, gender, age and [other factors];
- Incident reports not leading to arrest, including the race, ethnicity, age and gender of all subjects engaged with during the incident;
- Records of the race, ethnicity, nationality, age, gender, religion of all people entered into a local, regional or national gang database.

You also can learn details about your local law enforcement agency's involvement in immigration enforcement through records such as:

Financial records can show how much of your state or city resources are diverted for federal immigration enforcement.

For example:

- Records related to salaries of designated 287(g) officers or other expenses arising from a 287(g) program;
- Records of overtime pay to law enforcement officers during a specified time period;
- Budget records of the county or municipal jail, including grant money received for purposes of immigration enforcement assistance and expenditures on immigration enforcement activities or support to federal agencies, for a specified time period.

Internal policies or protocols of the sheriff's department, police department, or jail related to handling requests from ICE, which will show what officers are expected to do;

For Example:

- Records of any protocols or policies for responding to ICE detainer requests;
- Guidance or directives for how to respond to ICE requests for backup or other enforcement assistance;
- Policies or rules for officers regarding inquiries into immigration status or nationality or sharing of personal information.

Data or statistics on the number of people who have been turned over to ICE custody that can provide details about how many people have been uprooted from your community because of immigration enforcement;

For Example:

- Records of how many ICE detainees were received during [time period];
- Records of people released from local custody directly to the custody of ICE or CBP or a federal immigration subcontractor during [time period].

Agreements or Memoranda of Understanding with federal immigration agencies or private companies that show the extent to which your local government is involved in enforcing federal immigration laws and advancing federal priorities;

For example:

- Records of contracts, costs and actual expenditures for any contract with Immigration and Customs Enforcement, or ICE, U.S. Marshals, or private entities to detain or transport people in federal immigration custody;
- Records of participation in joint law enforcement task forces or operations;
- Participation or access agreements or protocols for databases or other systems of records.

STRATEGIZING AROUND PUBLIC RECORDS

It is important to have a strategy for identifying, requesting and using state or local records. Having access to records that show details of government decisions and policies, for example, comes with a huge responsibility. Consider with whom you plan to share the records and your messaging if you plan to publicly disclose them. Weigh the possible effects on the public, particularly on the community on whose behalf you seek to advocate.

Build your team. Identify local allies, which may include organizations, grassroots advocates, lawyers, lobbyists, faith leaders, and the local media. Each partner may bring new ideas, strategies, and resources to help achieve the overall goal. Some partners may be interested in submitting a joint open records request. It is a good idea to have a written agreement, such as a memorandum of understanding to outline the partnership goals and responsibilities and how any records you recover will be used.

Consider potential unintended consequences. Remember to include community stakeholders, including immigrants and other members of the community who could be affected by your strategy. Involving immigrants early in the process empowers them to share their relevant experience and concerns and become self-advocates. They can provide feedback on the effectiveness of your strategies, highlight any gaps or potential negative impact and propose alternative approaches.

TIP

Have a written agreement that outlines the partnership goals and responsibilities for achieving your objective.

Develop a communications strategy. This is very important, whether you plan to have a big media narrative or just need a platform for putting a spotlight on your results when you get them. Working quietly can occasionally be beneficial to your advocacy efforts. However, it may make sense to have a plan for releasing information to the local media. This can help you assert some control over how the public receives the information you release. Sometimes this is easiest once you have documents. At other times it is very effective to have media attention on the fact that you are making the request. That can highlight the underlying concerns and increases the pressure on local officials to respond.

Be flexible. Plan for surprises during the process. You could receive information you did not imagine existed. You may receive only part of the information you requested and need to continue to pursue a records request for longer than you anticipated. Discuss a plan for responding to unexpected results. Surprises can delay your projected timeline or require more resources and allies with expertise in other fields.

TIP

Before beginning an open records request, thoroughly search online for relevant information that is already available. This allows you to better target your request and build on information a state or local government has already published. You can also ask local agencies directly for documents or other information that may give you insight on what to ask for in your records request.

REQUESTING ACCESS TO PUBLIC RECORDS AND INFORMATION

You do not need a lawyer to request access to records held by your state or local government. Look online to see if your state's attorneys general or other state agency has published a guide, frequently asked questions (FAQs), or other resources to assist with requests for information through the open records process. Additionally, the National Freedom of Information Coalition has template requests for all 50 states that cite the relevant statutes and explains where you can reference the substance of your request: www.nfoic.org/organizations/state-sample-foia-request-letters. Do not expect access to all records. Every state restricts public disclosure of certain information, such as personal information or classified law enforcement records. However, there is a wide variety of records you can request, so feel free to be creative.

When requesting access to records, typically you would:

- Identify the state or local agency from which you want information;
- Check the submission requirements of the state or local agency (e.g., written or electronic forms);
- Include a fee waiver request when you submit your request, even if your state does not have a law that provides for a fee waiver. You can write a short description of why you are seeking a waiver and how neither you nor your organization have any commercial interest in the records you seek;
- Receive a response from the government agency, which could grant access to the records or deny your request. If you receive a favorable response, you may get all the records at one time or at different times as pieces of the information become available.

The Center for Constitutional Rights has published the FOIA Basics for Activists toolkit, a helpful guide through the open records process, including how to write your request and what to do if it is denied. The guide is available at www.ccrjustice.org/foia-basics-activists. Remember that laws and procedures vary state to state. Therefore, you should read the applicable laws and available online materials in your state for specific requirements and restrictions. This will help you avoid delays or a denial of your request. Both the National Freedom of Information Coalition (www.nfoic.org/organizations/state-foi-resources) and the Reporters Committee for Freedom of the Press (www.rcfp.org/open-government-guide) have state-by-state guides and other state-specific information.

WHAT IF YOUR REQUEST IS REDACTED, DELAYED OR DENIED?

The state may give various reasons for a delayed response or a denial:

- You may have missed a required step in the process;
- A different agency holds the records;
- The information you seek does not exist;
- Your request was ambiguous; or
- You may have requested personal records or information that is exempt from disclosure by law.

You have the right to appeal an agency's denial, and you can do so through the agency's administrative appeal process or in court. Your state law may require you to challenge the response through the agency's administrative appeal process first before suing in court. This process may involve completing an appeals form and filing it with the agency for review, or writing a letter to the agency outlining your objections. The Reporters Committee for Freedom of the Press provides state-by-state information about administrative appeals process at www.rcfp.org/open-government-guide/.

However, if, after the administrative appeals process, the agency still refuses access, consider filing a lawsuit to get the requested records. You may file a complaint in state court or contact an attorney for guidance with this process.

REVIEWING THE INFORMATION

The records you request may arrive all together or in stages. Once you receive the information, review it to confirm that the agency sent what you requested. As you review it, look for answers to your questions and take notes. Tracking the information you receive can be helpful for your overall advocacy process. One way to track it is to record the date of the document, places mentioned, names of individuals mentioned in a document, what type of document it is, a brief summary of its contents and whether it is a priority for your advocacy objective. In addition, you may discover that some of the information is missing or heavily redacted to restrict disclosure. The administrative appeals process discussed in this guide may be useful to obtain more information.

USING THE INFORMATION

Information obtained through the open record process can be used in many ways to help you achieve the overall objective you have identified. Below are some examples to consider:

Raise awareness in your community about certain issues. Share what you learned about your local government's involvement on certain local issues and highlight trends. For example, information you obtain about local law enforcement practices might provide important details of any agreements between ICE and your local government. Be specific. Prepare to talk about the chilling effects these agreements and police practices have on public safety and other possible repercussions or trends, such as racial profiling or due process violations. Recommend solutions for positive change and consider offering your expertise to that effect.

Support an organizing campaign. You can gather critical information through your state's open records process to inform advocacy for laws and policies that address concerns in your community. You may discover data about gaps in local programs and services, such as limited access to education and job training opportunities, or insufficient resources for first responders and public health care centers. Coordinate with other advocates to urge your local officials to implement policies and allocate funds for initiatives that prioritize and address your community needs.

Community empowerment. Use the information from your public records request to better ensure equal access to local services and resources for all your community's residents and to make Know Your Rights training more effective for immigrants. Create a welcoming plan for your community that promotes integration and creates opportunities for all residents to participate fully in society, including addressing language barriers in governmental services, English classes for adults, and dialogue between immigrants and long-time residents. Your information can help empower residents in their efforts against prejudice, stereotypes and bias. Faith groups, nonprofits, elected officials and other intermediaries also can use it in their community-building efforts.

ILLUSTRATION

In a recent article in the local newspaper, an assistant police chief was quoted saying his police force was collaborating with ICE on new communications technology. Local residents and some city council members were concerned about the partnership and wanted to know more about what kind of technology was being used. A local immigrant rights organization filed a state records request asking for any emails between the local police – including the assistant police chief – and ICE concerning any new communications technology, as well as any written agreements between the police and ICE. In addition, they requested any contracts or other documents the local police agency had signed regarding the technology, and any emails or letters between the police and local politicians regarding ICE and the communications technology.

After submitting their request, the immigrant rights organization received several hundred pages produced to them a few weeks later. Many of these pages had information that was redacted, but there were emails showing conversations between police officials and ICE, and also a signed contract for new technology.

The immigrant rights organization showed the documents to a journalist they trusted. The journalist wrote an article, which raised questions about government transparency around the new program. The organization also held several community workshops regarding police-ICE collaboration where they used certain documents to provide more information about what was happening. In addition, they contacted local politicians about the documents. Some of those politicians then made public statements demanding more information and asking why the police were collaborating on new technology with ICE.

Government accountability. The information you obtain may show actions by your state or local officials that are unknown to the public. Some of these activities may even be contrary to the law, such as, private city government meetings in violation of your state’s open meetings act. Records you find also may show internal policies or government practices that raise public safety concerns and limit individual rights. You may use this information as a basis to demand answers from your officials, achieve changes in law or practices, or initiate a lawsuit to end such practices.

Support litigation. Public records can be useful in supporting litigation. For parties suing or intending to sue the government on social justice issues, public records may provide critical evidence needed to prove a claim in court. Perhaps others in your area are suing or planning to sue on those issues. They may have filed their own request for similar records. Consider working with these organizations and sharing documents.

CASE EXAMPLE

In August 2018, the ACLU of Maryland filed a PIA request with the Montgomery County Sheriff’s Department to obtain “memorandum, policy, agreement, or other document that outlines the policy of holding individuals at Montgomery County courthouses for the purpose of transferring that individual to the Department of Homeland Security (DHS) for immigration enforcement, and any communication between the Sheriff’s Office and DHS surrounding that memorandum, policy, agreement, or other document.” Upon receipt, the organization discovered that the agency’s policy allowed officials to hold people subject to ICE detainers for three hours or more, with a supervisor’s approval, beyond their time of release under state law. This led the ACLU-MD to send a letter to the Sheriff’s office, urging the agency to rescind the policy and end the practice, arguing it was unconstitutional. In response, the agency revised its policy, effective January 2019, to require a judicial warrant to hold individuals in custody beyond their state-mandated release date. Learn more at www.aclu-md.org/en/press-releases/victory-montgomery-county-sheriffs-office-revises-unconstitutional-immigrant.

TEMPLATE OPEN RECORDS REQUEST

Date
State or Local Government Agency
Full Address

Re: Open Records Request

To Whom It May Concern:

This is a request under the [State] Public Information Act, [insert relevant state statute], on behalf of [name of organization or individual], which seeks disclosure of all records in your custody or control, created or received between January 1, 2020 and the present, pertaining to the following:

[Feel free to be creative with your request. Below are some examples:]

- o School placement policies;
- o School Board meeting minutes
- o Policies and procedures concerning students' access to school programs and support services to make learning and integration less difficult;
- o State or local government agency policies and procedures related to compliance with anti-discrimination and privacy laws.
- o Records of participation in joint law enforcement task forces or operations;
- o Records of all arrests by an agency in a specified year, including the location of arrest, race, ethnicity, gender, age and [other factors]

The term "records" as used in this request includes all information in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audio tapes, e-mails, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training manuals, or studies. Should you withhold any portions of the requested information, we anticipate an explanation for the denial supported by applicable state law, and a notice of available options for appeal or other resolution.

We request a waiver of all fees regarding this request. [Insert organization] is a nonprofit, tax-exempt entity that is dedicated to servicing the public interest and does not seek this information for commercial purposes. [Insert your organization's mission statement and the benefits to the public]. Thus, a waiver would be in the public interest. [If available, insert your state's PIA fee waiver statute here. You may include more information about why the records you seek is crucial to your public interest work.]

We look forward to receiving your response within 30 days [or time prescribed by your state law, if applicable]. Kindly inform us in writing of any delays your office may have to fulfill this request in a timely manner, and advice of the amount of time it will take to furnish the records. If we do not receive the requested information within the required time period, we will consider your failure to produce them a denial, and we will take further action in pursuit of a resolution.

Thank you for your cooperation. Please furnish all applicable records to:
[Insert full name and address of the person authorized by your organization to receive the information.]

If you have any questions regarding this request, please contact [someone authorized to act on your organization's behalf] phone and/or email address.

Sincerely,
Name and Title
Signature

ABOUT THE ORGANIZATIONS

The Catholic Legal Immigration Network, Inc. (CLINIC) is the largest nationwide network of nonprofit immigration programs, with 380 affiliates in 49 states and the District of Columbia. Programs include training and supporting immigration legal agencies, advocating for humane immigration policies, litigation on behalf of vulnerable populations, integration support and legal representation for immigrant religious workers. CLINIC also is a partner in providing pro bono representation to detained families, and offers public education materials on immigrants' rights and Catholic teaching on migration. CLINIC's work draws from Catholic social teaching to promote the dignity and protect the rights of immigrants in partnership with our network.

The Immigrant Legal Resource Center (ILRC) is a national nonprofit resource center devoted to working with and educating immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. The ILRC trains attorneys, paralegals and community-based advocates who work with immigrants around the country. We support immigrant rights organizations to understand and advocate for justice, fairness, and protection for immigrant communities. We inform the media, elected officials and public to shape effective and just immigration policy and law. Our staff works with grassroots immigrant organizations to promote civic engagement and social change.

The Center for Constitutional Rights works with communities under threat to fight for justice and liberation through litigation, advocacy, and strategic communications. Since 1966, we have taken on oppressive systems of power, including structural racism, gender oppression, economic inequity, and governmental overreach.