

FREEDOM OF INFORMATION LAWS IN THE UNIVERSITY ENVIRONMENT:
A CHALLENGE TO THE ARCHIVAL MISSION?

International Council on Archives
Seminar on Archives of Universities and Research Institutions
Reykjavik, Iceland 15 September 2006
William J. Maher
University of Illinois at Urbana-Champaign

As with many other American college and university archivists, I carry an unwritten assumption to work each day.¹ It infuses all archival functions I conduct from appraisal through description, preservation and research services. The assumption is that the University Archives should be the definitive resource for any historical information about the university. To meet this expectation, the archives needs to be proactive in selecting records, building access systems, creating an environment that protects them, and serving students, faculty, and others who want to examine them. Because we operate in a world of limited resources, exercising this responsibility also means archivists need to defend and protect our primacy among campus units that supply records and information to the public. Clearly, there are university information services that do not challenge the exclusivity of our claim, such as the news bureau, the transcript office, or the prospective student publicity office. However, for most individualized information and records requests, the University Archives should have the primary role.

For the first 20 years after our 1963 founding, the University of Illinois Archives held this position both by the fact of the services we provided and by the absence of any competing mandate on campus. Consistent with an Illinois Attorney General's 1964 opinion, the University's *Statutes* recognized ours as the final authority when deciding the ultimate fate of all campus records. By dint of effective practice, our public and academic users knew that if they could not find answers from us, there was no other coherent means to pursue their question. Of course, we and they knew that our scope was limited to inactive administrative records and manuscripts, and that the archives was best suited for topics 20 years old and more.

¹The author would like to acknowledge the funding assistance of the UIUC Library's Research and Publication Committee and the invaluable research assistance of John V. Franch.

15 September 2006

This well-ordered universe suddenly came to an end in 1984, not because of any failure of our system, but because of much broader forces affecting Illinois law as a whole. Ever since the 1966 enactment of the federal U.S. Freedom of Information Act (FOIA), journalists, civil liberties groups, and attorneys had been lobbying the American states to pass their own FOIA or public records acts. In 1983, after Mississippi became the 49th state to adopt a FOIA, Illinois' legislators were finally shamed into joining the rest of the country.² They adopted a law mandating state agencies to comply with public requests for information and records of state government institutions. As a state agency, the University of Illinois was automatically included.

During the summer of 1984, we spent considerable time as part of a cross-campus task force to develop implementation procedures, state-compliant response guidelines, and a list of records held by the university to aid the public in formulating requests. A key question was which campus office would be the best place to receive and process requests under the Illinois FOIA law, known as IFOIA. The options included the secretary of the Board of Trustees, legal counsel, library, archives, and public affairs. In the end, the president assigned the responsibility to Public Affairs, probably because they were experienced in dealing with journalists and often were most familiar with the breadth of current activities on campus that they assumed would generate the greatest demand under IFOIA.

The University Archives, which then had only a small staff of two professionals, was relieved to have been passed over for this assignment, but we did begin to wonder how often IFOIA requests might end up superseding archival inquiry, causing us to be less valued and used. Over the next 20 years, as the Archives continued to grow and as our overall level of use rose by more than 52 percent, we began to worry less about being superseded, and we even came to refer

²Jeffrey M Shaman, "Illinois Votes for Secrecy," *Chicago Tribune*, February 2, 1983, p. 19. "Illinois: We're Number 50," *Chicago Tribune*, April 3, 1983, p. A6. "The Legislature's Score Sheet," *Chicago Tribune*, July 13, 1983, p. 18.

15 September 2006

some of our users to the IFOIA office if their requests involved current or very recent records not yet transferred to the Archives. We also found it convenient to make referrals involving information for someone who had an obvious grievance with the University, such as a disgruntled faculty member or an unhappy landowner whose property was being affected by University planning, or when we knew recent relevant records might exist but involved confidentiality issues.

Whether it was a good idea to applaud the assignment of IFOIA administration to someone else bears reconsideration, certainly in the context of the electronic information age. As that age has proceeded, we have seen how the new records environment requires archivists to be proactively engaged in current information systems. Thus, the fact that IFOIA is administered by the Public Affairs office has given us recurrent worries about our mission. Specifically, we have been concerned that by answering a breadth of information inquiries from university records, the IFOIA office is rendering the University Archives less relevant. So, as much as we were relieved by not having to accept the burden of FOIA administration in 1984, we have regretted the further distancing from current information operations it has meant.

Although Illinois may have lagged seriously behind all other states in passing a freedom of information law, our experience of having the FOIA administration placed outside of the archives is consistent with every other U.S. public university with which I am familiar. For example, within the consortium known as Committee on Institutional Cooperation, essentially the Big Ten athletic conference schools, none of the ten public university archives programs are responsible for FOIA administration. Instead, such requests are handled by the public affairs offices in five institutions, the legal counsel's office in four institutions, and the President's Office in one institution. So perhaps there is comfort in numbers, but as a professional, I am not sure that academic archivists should be ready to walk away from the fundamental issues involved, and I for one wanted to know much more about how Illinois' FOIA actually worked in relation to

15 September 2006

university records. So, in 2002, when we were first approached by the campus Public Affairs Office to appraise and prepare a records schedule for their IFOIA administrative files, I saw an opportunity to address my questions. On review, we found that they had retained a case file for every inquiry received. The files included requester information, response letters, excluded documents, redacted documents, and appeals. We agreed that all the files had a value for understanding how effectively the University was fulfilling its mandate for public accountability, and we therefore ordered the transfer of these case files to the University Archives. In January 2005, we accessioned a total of 43.0 cubic feet of IFOIA case files which have become the basis of the current study.

The files have enabled me to study not only how IFOIA is being used, and how responsive or non-responsive the University has been, but also how all this relates to records and information services of the archives. With funding from the Library's Research and Publication Committee, I employed a six-year veteran archives graduate research assistant to examine a systematic random sample of the files. Because all of the 1,607 original files were numbered consecutively, it was easy to apply a random number sample. We started with a target sample size of 311, which allowed a 95 percent confidence level at a 5 percent confidence interval. To account for a few instances of assignment of numbers to cases for which no file existed, we oversampled slightly. In the end, we had a sample of 314 requests. Two of those requests had been withdrawn before the University had an opportunity to respond, so for some of the later variables in the study (Tables 6 and 7), there are only 312 cases.

Table 1: Number of Requests
 Random Sample N=314

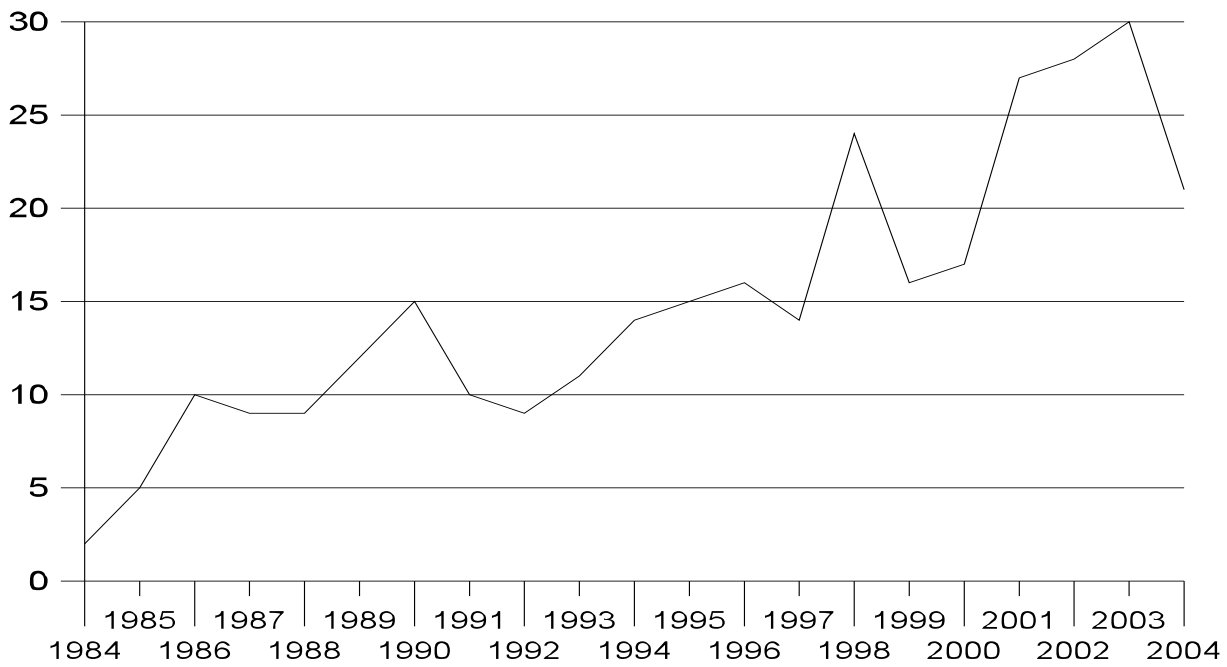


Table 2: Individuals Making Requests

Number of Requests Submitted	Persons Making Request(s)	Resulting Number of Requests
One	223	223
Two	16	32
Three	6	18
Four	3	12
Five	3	15
Fourteen	1	14
	252	314

Table 3: Classification of Requesters n=314	
Unknown	2
Non-academic staff	10
Facutly	22
Attorneys	26
Business	27
Labor Unions	29
Journalists	51
Students	68
Public	79

Table 3: Classification of Requestors

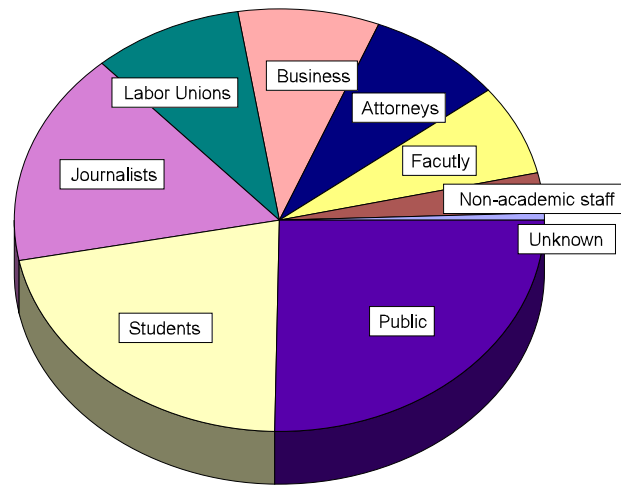


Table 4: Purpose of IFOIA Request		
PURPOSE	NUMBER	PERCENT
Information relating to a family member	6	1.9%
Academic research	13	4.1%
Claim against a third party	18	5.7%
Labor relations	20	6.4%
Advocacy for social or political cause	27	8.6%
Business/commercial	28	8.9%
Grievance or claim	28	8.9%
Information about the requester him/herself	56	17.8%
Journalism	57	18.2%
Undetermined	61	19.4%
TOTAL	314	

Accreditation	1	Personnel	4
Crime	1	Self	4
Discipline	1	Uni High School	5
Health	1	General	6
Academic	2	Animal Treatment	11
Accident	2	Faculty Member	12
Donations	2	Collective Bargaining	14
Student	2	Demographic	14
Chief Illiniwek (mascot controversy)	3	Athletic, Coaches & NCAA	24
Environmental	3	Unclassified	30
Extension	3	Audit and budget	40
Law School	3	Contract Terms	43
Architectural	4	Police Report	75
Graduate Stud/asst	4	Total	314

Amount Provided	Count	Percent
None	73	23.4%
Little	20	6.4%
Moderate	68	21.8%
Considerable	107	34.3%
Complete	23	7.4%
Uncertain	21	6.7%
	312	

Table 6B: U.S. Federal Government Responsiveness to FOIA Requests, ³ (2,584,871 requests, FY 2005)	
Amount Provided	
Denied	0.8%
Partial	4%
Full	87.2%
Not disclosed for other reasons	8%

Table 7: Reasons for Denial (University of Illinois IFOIA Requests)		
Reason	Count	Percent
Course material	1	0.3%
Preliminary Drafts	6	1.9%
Unable to Determine	9	2.8%
Other, Miscellaneous	12	3.8%
Unduly Burdensome	16	5.1%
Personal Privacy	37	11.9%
Lack of Data	39	12.5%
Specific Items in IFOIA	42	13.5%
N/A (University was largely responsive to request)	74	23.7%
Multiple Reasons (cited for denial of all the parts of the request or different reasons cited for denial of each of the multiple parts of a complex request)	76	24.4%
	312	

³Government Accountability Office, *Freedom of Information Act: Preliminary Analysis of Processing Trends Shows Importance of Improvement Plans*, Testimony before the Subcommittee on Government Management, Finance, and Accountability, July 26, 2006 p. 18. <http://www.cjog.net/documents/GAO%20Testimony,%20Report.pdf>

Table 8: Relationship of FOIA Requests to University Archives' Holdings		
Requested documents are:	Count	Percent
Likely to be held	33	10.5%
Combination of Likely to be Held and Not Held	4	1.3%
Not held	230	73.2%
Archives Holdings Should Hold These Materials	47	15%
	314	100%

FINDINGS AND CONCLUSIONS:

After looking at the IFOIA inquiries in some depth, it is apparent that this is a quite different kind of information service from what the University Archives provides. It differs in types of users, their purposes, types of documents sought, and in the interpersonal dynamics between the requestor and the University.

In broad terms, the clientele for IFOIA is significantly different. For example, in the sample study, 26.1 percent of the requesters were attorneys, businesses, or labor unions whereas these users account for less than one percent of University Archives researchers. Similarly only 4.1 percent of the FOIA inquiries were aimed at academic purposes (course papers, classroom presentations, and thesis), whereas such academic uses account for 30.2 percent of Archives use.

The structure and nature of IFOIA requests also are substantively different from the bulk of University Archives use. Of course, each request is unique, but in a broad way the differences are important. In most cases, archival use focuses on gathering a wide array of records about a specific or general event to support a general synthesis by the researcher. If a specific document or fact cannot be found, often neighboring information and records can be utilized in the synthesis, or even, the lack of a find can be used as "negative evidence." However, with IFOIA requests, the information being sought is often highly specific—a particular document, a contract, a

15 September 2006

particular expenditure amount, or some other statistic. If the specific item cannot be found or released, neighboring information often will not satisfy the requestor in the least. With archival inquiries, when we cannot find what a researcher specifically requests, our approach is to work around the edges of the topic, often finding material that enables a new line of inquiry. By contrast, with IFOIA, if the answer sought is not there, the response is to give only a minimum of information. In other words, the responding office is authorized only to release what is specifically requested, not ancillary information.

There is, of course, some overlap between the kinds of information journalists and others seek through IFOIA and from the University Archives . Both kinds of requesters are pursuing institutional information to prepare a news story, but the fundamental characteristic of the IFOIA inquiries is that they are focused on breaking news, instances where university decisions and actions have just been made, such as responses to sanctions by the national sports accreditation agency (NCAA), or a new coach's salary, or the number of people who got sick from food at the university president's reception. These kinds of records, however, are still in the hands of active administrators, and while being *au courant* is a fine goal for an archives, it is hard to imagine how that many offices within a university could function with all of their current operating records held by an archives located across campus. So, even though these requests serve an important need, and sometimes are of enduring historical interest, there is no viable scenario by which the University Archives could meet these information needs.

But there are even more compelling reasons that a university archives should think twice before agitating to handle such requests. For those requests from individuals seeking information on themselves in police and disciplinary reports, there are specific legal and institutional rules that make it unlikely these active records would be held or managed by the Archives, sometimes even long after the records have any active administrative value. Even if we could overcome these

15 September 2006

barriers, the records would probably become part of a series that would be tightly restricted from access without resort to the same array of institutional officers as currently involved in IFOIA management.

On top of that, an archives would be required to enforce the IFOIA provisions that prevent the release of business information that might undermine the state's position with competitive bidders, or public information which could be put to private gain, but many information requests deal with just such business contracts, lawsuits, labor contracts, and grievances. Thus, an archives would need to establish a referral and review process different from its normal practice that would involve consulting the university's legal counsel, institutional research boards, and grievant advocacy personnel in order to ensure due process for the grievant as well as to protect the legal interests of the University. Given our prior experience with restricted records, there is no doubt that the University Archives could do quite well at managing such a structure, but the result would be rather much like that currently used by the current IFOIA office. There hardly seems a point in re-inventing this wheel.

In addition, the IFOIA staff are in the line of fire for grievants in a way that the Archives are not and do not want to be. The prevailing legal advice is to interpret the law's phrase "can refuse" to mean "must restrict," with the result that what were meant to be flexible exemption guidelines for the release of information have become outright prohibitions. Thus, due to this overly restrictive interpretation of language, the IFOIA office has the unpleasant task of closing off access to information. By contrast, the prevailing culture in the University Archives, perhaps reflecting our service-oriented institutional parent, the University Library, is one of providing as much information to each user as possible. Few would want to forfeit the Archives' resultant positive public image to take on the role of rigid gatekeeper.

Independent of the archival issues, it should be noted that when looking at all of the data

15 September 2006

from the inquiries, the IFOIA implementation does not seem to be very supportive of public access. Too much material is excluded from access by the exemptions in the law, and the percentage of denial or minimal response seems too high. A comparison of the responses in the study vs. those reported by the U.S. Federal government clearly shows the University as lagging significantly behind the federal government. In defense of the University, however, it must be noted that complaints about IFOIA implementation exist for all kinds of Illinois state institutions, not just the University of Illinois, and these have been widely reported by journalists throughout the state, and even raised prominently by the then state attorney general.⁴ In fact, there were attempts to improve the law, but they encountered a mix of state bureaucratic resistance and lack of consistent attention from politicians more concerned with the 2002 mid-term elections, in which the dominant political party lost its hold on many of the state's constitutional offices, including the office of governor and attorney general.⁵

The bottom line is that the IFOIA operations and methods could, with careful planning and adequate resources, be adopted by the Archives, but there is no significant compensating advantage to taking on this responsibility. Undoubtedly, my reluctance to take on the expanded mission that FOIA administration would involve could be seen as backward-looking. It might be criticized as based on the narrow idea of archives as being only old and historic information and not serious about the breadth of records and information issues that we should engage if we want to be at the center of a university's information policy. Certainly, my perspective reflects more of a library service model than an emphasis on the role of archives as a tool for the exercise of citizen rights. However, in the absence of a change in our mandate and concomitant resources, the

⁴"Illinois' NOT SO OPEN records," *Champaign-Urbana News Gazette*, June 25, 1999.

⁵"Tougher Information Law Urged," *Chicago Tribune*, September 27, 1999, Metro Section, p. 2.

15 September 2006

appropriate conclusion seems to be that the existing assignment of IFOIA responsibilities to the public affairs office is working well. After all, the public affairs staff, as institutional flak agents, may be the best people to deal with public requests for information when those requests seem to emanate from citizen grievances with the institution, while the archives can focus on providing less current, and less politically sensitive, historical and research information. That said, these are only suggestions of how college and university archivists should begin to think more seriously about how they define their role in the current information environment—suggestions that should engender a discussion about the core mission of university archives.

At the end, I have come to reexamine the unquestioned assumption that opened this paper—the assumption with which I arrive at work each day, that the archives is or needs to be the primary source of university records and information. Although it is important for the archives to have a primary role in the management of all university information of enduring value, the complex modern world requires that archivists pursue their mandate less as monopolistic owners and more as expert, collaborative purveyors. Without a galactic shift in resources, archivists lack the means to assume effective responsibility for the breadth of tools and staff needed to provide comprehensive control of institutional information. In this environment, our options are limited. We could, no doubt, put forward a thoroughly articulated position paper to our administrators arguing for an expansion in our authority and the funds to fulfill a more sweeping mission. Alternatively, we could concede defeat and retreat to the idea that the archives are just historical materials far removed from any administrative or citizen urgency. Neither of these options is appealing or responsible. Instead, what our IFOIA experience has demonstrated is that, as with other current institutional information issues (e.g., establishing control over electronic records), viability for the archives' future lies in collaborative partnerships with other key campus players. By both recognizing the legitimacy of other units' authority over less archivally critical campus

15 September 2006

information, but also asserting our pre-eminent competence over distinctly archival domains, we will find ourselves in a more realistic and stronger position to care for the records of enduring value throughout their full life-cycle. Obtaining institutional recognition for our authority cannot come by under-resourced assertions of control over activities such as FOIA. Rather it will come from effective, proactive collaboration and knowledgeable contributions to institutional information policy.