

# What we're thinking about

Insights, news, and tips from our top tech and business innovators.

## Mastering Complex FOIA & Public Records Requests



[Brenda Dodd](#) | April 30, 2019 | Read time: 3 min

### ***Part 1: Communications advance faster than transparency regulations***

Ours is a mobile society that relies on instant, convenient communications. And it is profoundly affecting the ability of government agencies to timely respond to FOIA and public records requests (PRRs). The digital communications that make up today's public records and the mobile devices they are sent through advance in complexity and multiply in number *much* faster than the transparency laws and guidelines that regulate them – and *much, much* faster than agencies have learned to effectively manage them.

But the tide is turning. In this first of a two-part blog series, we review how transparency regulations are slowly changing in response to aspects of today's digital communications that complicate efforts to disclose public records. And in part two, we'll see how a single technology platform masters complex PRRs from start to finish so agencies can lay all those complications aside for good.

### **What's changed to make public record requests so complex?**



read, leaving no trace of their existence. Email content, too, can now be scheduled to disappear after a set time.

On top of that, elected officials and public employees use their personal social media and email accounts to send business-related messages. And they conduct agency business using both agency-supplied and personal smartphones, tablets, computers, and laptops.

That means a lot of communications that are subject to disclosure never make it to the agency's shared drive or main records storage location. They are spread across multiple devices and accounts, including personal ones. Agencies confront complex issues in locating, collecting, reviewing and disclosing these digital communications. Most currently used tools and methods are not just ineffective, but wildly inefficient, resulting in costly administrative burdens.

Yet, deadlines remain strict. Repeated delays, errors, and inconsistencies erode public trust. Failing to comply with requirements of open records laws leaves agencies exposed to potential penalties, fines, and lawsuits. Each year, we hear about growing backlogs and more costly lawsuits. The risk of litigation makes agency employees even more cautious when preparing responses, slowing the process further.

Now, as the personal and professional lives of public officials intersect across so many devices and platforms, the line between public and private communications blurs. Are communications sent from personal phones and private accounts subject to public disclosure? It's an important question because among the other issues that make digital communications difficult to include in public records disclosures, well-intended privacy laws are detrimental to open records search and retrieval efforts.

## **Courts, lawmakers, and new regulations lean toward more transparency.**

Some agencies try to avoid the issue altogether by restricting agency-related communications to state-owned devices. Kansas Governor Jeff Colyer requires his staff to use official email accounts for all government business. Private accounts are banned for any communications related to "the functions, activities, programs or operations" of the office.<sup>[1]</sup>

Despite privacy concerns, attempts to prevent access to the personal devices of officials meet significant resistance. Recent proposals to exempt all communications on personal phones from open records laws were shot down by lawmakers in Kentucky and Arizona.



on private electronic devices of government officials is subject to disclosure under the Public Records Act.[2]

Now, states are amending their open records laws and guidance on disclosures to include expectations for digital communications. Lawmakers in New York are working to specifically add text messages to the types of records covered under the open records law.[3] After struggling to include digital communications in public records disclosures, state officials in North Carolina collaborated with the local press association to revise public records guidance to include text messages and private messages sent via social media and alternative platforms.[4]

This trend toward more transparency will continue, regardless of the form or location of communications. It is now more important than ever for agencies to adopt the right technology to address the challenges presented by complex PRRs.

## Challenges of Complex Public Records Disclosures

Without the appropriate technology to augment an agency's capabilities and optimize their efforts, responding to complex PRRs poses complicated challenges including:

1. **Locating responsive records:** Collecting and standardizing a variety of file types from multiple devices and locations; conducting effective searches to find relevant information within them.
2. **Preserving the authenticity of records:** Capturing files and their associated metadata – author, creation and edit dates, recipients, etc. – without corrupting their authenticity.
3. **Processing records efficiently:** Optimizing search, review, redaction, and processing efforts.
4. **Easing collaboration and disclosures processes:** (e.g., easing third-party consultations regarding exemptions or automating Section 508 coding.)

For a closer look at how these issues hamstring an agency's abilities to disclose public records timely, watch the webinar "[Dealing with Complex Public Records Requests](#)" where Christine Wood, Director of PRA Services and E-Discovery Counsel at Best Best & Krieger joins ZyLAB to offer tips and best practices on how to manage complicated requests.

As you'll see in the webinar, a single, advanced technology platform is the easiest way to gain the tools and assistance you need to optimize the entire process. In our next post, we show how this type of platform helps agencies manage complex PRRs through smarter records identification, collection, processing, and disclosure processes.

[1] <https://www.dispatch.com/news/20180722/disappearing-messages-private-phones-test-open-records-laws>

[3] <https://abcnews.go.com/Technology/story?id=4457702&page=1>

[4] <https://www.knoxnews.com/story/news/2017/03/16/texts-public-records-but-access-them-remains-tricky/99245672/>



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