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# Teaching Access, or Freedom of Information Law

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## Teaching Access, or Freedom of Information Law *Richard J. Peltz-Steele*

*Abstract. Based on the author's experience developing and administering the course and materials, this article provides an introduction and resources to teach a graduate journalism or professional law school course on access to government, commonly called "freedom of information law," which may be constructed as a capstone course in law school. The appendices provide supporting material and references.*

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### **Introduction**

Access law, or freedom of information (FOI) law is regarded generally as a specialized area of administrative law. But to place it under that umbrella is to do it a gross disservice. Access comprises a resplendent niche of law and policy, involving contemporary questions of constitutional law, employment law, privacy law, criminal and civil procedure, and national security policy, to name just a few areas in addition to administrative law and procedure. Access therefore poses a tremendous challenge to students, but its study can be tremendously rewarding and a joy for the professor in the classroom. Admittedly like any professor who holds dear a favorite course, I am routinely chagrined to find the graduate of a journalism or law school who did not have the opportunity to study access in a discrete course, and I wonder at the lawyer or journalist who can do the job without it.

#### **A. Law of Access to Government Casebook**

The only casebook dedicated to the study of access law and policy, *The Law of Access to Government* (Carolina Academic Press 2011) (and *Teacher's Manual to The Law of Access to Government* (Carolina Academic Press 2013)) is designed for law students and for advanced students in journalism and mass communication (JMC). The book supports the case method, which will be familiar to law students; it might be the first time JMC students are exposed to it. I learned media law from a legal casebook as an undergraduate at my *alma mater* j-school, with Professor John Jennings at Washington and Lee University, and the experience was rewarding, if difficult. The use of a legal casebook made the course attractive to JMC and pre-law students for the insight into "thinking like a lawyer." As a law teacher for fifteen years, having taught skills, doctrinal, and seminar classes in law, and having taught courses to JMC students in the JMC department and in cross-listed courses, I have become a devotee of the case method. I am confident that in the right hands, it can be an effective approach to the study of law as a subtopic within any discipline.

At the same time, the preparation of a casebook requires an understanding of what knowledge and experience students bring to the table. *The Law of Access to Government* is designed to make the most of the case method, but also makes case material accessible simultaneously to students more and less educated in U.S. law. Advanced JMC students tend to be strong in journalism, of course, and in basic civics and local government, but unfamiliar with broad federal constitutional principles, including dual sovereignty, and practical legal matters such as the organization of the courts and judicial procedure. Law students tend inversely to grasp broad constitutional law and legal process, but know little about the functioning of state and local government and next to nothing about the reporting process and mass media ethics. Law professors might find the case excerpts longer than in other texts and sometimes repetitive of procedural disposition; often this is to provide a stronger legal foundation for the JMC student. Sometimes, case excerpts are edited, or supplemented with notes, to provide a stronger foundation in media practice and policy for the law student.

In the end, I have found that access students in law and JMC benefit greatly from the course not only through mastery of the substantive case material, but through a collateral exposure to "real world" scenarios in the *practice* of law and journalism. Access moreover makes a spectacular subject of cross-listed teaching, in which JMC and law students learn a great deal from one another.

## B. Organizing the Course

The book is designed to support coursework in journalism and mass communication (JMC) as well as in law, and an array of types of courses in either program, or cross-listed in both. I have taught access law in a law or interdisciplinary **seminar** format, using selections from the book in conjunction with other readings in a student-driven model. I also have taught the course in the traditional format of a law school **doctrinal class**, loosely Socratically, using the entirety of the book to drive the course. Moreover, especially when class size is small, the study of access law lends itself well to a range of additional experiences beyond the book, including

- independent research projects, such as having each student represent a state and contribute to class discussion from the experience of that state's access regime;
- guest speakers in law and journalism, such as local government officials, journalists, legislators, community organizers, and representatives of the state press association;
- and practical assignments, such as making a record request under a freedom of information act, or attending an open proceeding of a governmental body.

I enjoy teaching access especially when the state legislature is in session, as legislators can always be relied on to propose a slate of FOIA exemptions, ripe for class discussion.

The instructor must at the outset make a fundamental coverage decision. Like many areas of law, access does not lend itself well to study in a cumulative fashion. Where reporting

students can begin with leads, move on to news briefs, and then move on to more complex work, courses in law often require starting *somewhere*, understanding that students while studying the *somewhere* will be missing much else that is going on at the same time. Ultimately one leads the class through enough *somewheres* that the big picture of a coherent body of law emerges in the student's consciousness.

So it is with access law. It is possible to study merely statutory open records and open meetings, but that study conveys no understanding of the rich heritage of common law access in the United States. It is possible to study only the *Richmond Newspaper* doctrine, but that study fails to describe the mechanisms of access that lawyers and journalists are most likely to employ. A complete understanding of access requires an understanding of its constitutional, common law, statutory, and administrative dimensions, as well as its interactions with other bodies of law, such as criminal prosecution and civil privacy. One must start *somewhere*.

To that end, the book is organized in three parts, which are, essentially: judicial access, executive access, and statutory access in general. The book begins with **judicial access** because it is first in time; the oldest tradition of access in our legal system can be traced—indeed was traced by Chief Justice Burger—to the community councils of common law England. Delegates of the Crown performing adjudicatory functions among the people moreover were the origin of the freedom to petition, and public witnessing of those official acts served to foster confidence in justice and, thus, allegiance to the monarch. The judicial branch more than the political branches depends on access because, without power of purse or arms, the courts depend on public confidence for their rulings to have credibility and merit. The judiciary therefore has the deepest experience with access, and characteristics of the statutory access systems with which we are most familiar today are direct descendants of common law rules and practices—the very notion of a presumption of openness and a balancing test for exemption—that evolved in the courts.

The book moves second to examine critical issues in **access to the executive**. Part II begins with the nation's principle access mechanism, the federal Freedom of Information Act, which, whatever its innovations and shortcomings, offers a pattern for statutory access that has generated a vast quantity of federal case law and moreover been influential in the states and in the world. Here students meet *Reporters Committee v. DOJ* (U.S. 1989), an excellent if troubling jumping off point to examine a range of issues, including presumption and exception in access, policies of access and privacy, the jobs of journalist and law enforcement, procedural standards of proof and review, and the problem of adapting principles in an access regime to new technologies. Part II proceeds to examine access vis-à-vis government power as implicated in its most fundamental functions in furtherance of the common good: law enforcement and national security, the latter with special attention to the trials of access during the "war on terror" of the last decade.

Finally the book turns to traditional **statutory access**, sampling the broad range of issues that arise in the journalistic, legal, and public practice of access. Part III is organized to consider open records, open meetings, and then special problems in electronic access. Finally, Part III brings the book full circle, which is to say, back to the judiciary, to examine the outer limits of statutory access law, where it runs up against the constitutional constraints of structure of government, of individual liberties, and of the line between public and private.

Though statutory matters arise in the third part of the book, it is impossible to discuss access for close to two-thirds of a semester without discussing multistate statutory access, and indeed, such abstention is not at all what I propose. To the contrary, I discuss multistate statutory access with the class from day one. As suggested above, and detailed below, I assign students each to a state statutory access regime to study independently throughout the semester, and everyone in the class to study the statutory access system of the state in which I am teaching. The multistate statutory experience in access is present in the background of the course throughout the semester. Our **objective** as a class is to discern **multistate norms of access**, which we construct over the course of the semester from our study of the historic origins of access, contemporary issues in access, and examination and discussion of the law as it has developed in multiple jurisdictions.

As an **alternative organizational approach** for the course, I have had students begin with Part III of the book, and then proceed to Part I and Part II. This approach gives students a more immediate introduction to practical issues in access. I used this approach to the subject when the state legislature was in session with a number of important state FOIA bills pending, so class in those semesters offered a rare opportunity for close examination of statutory issues in action. I therefore wanted the students to become familiar with statutory access faster. The approach worked well enough.

But absent those rare circumstances, I still prefer beginning with Part I and the judiciary, and so organized the casebook that way. While my students on the exceptional occasion beginning with Part III had marvelous experiences—tracking bills in the legislature, receiving legislators and lobbyists as guest speakers, and discussing policy-based testimony heard in legislative hearings—I found that class discussions were lacking in historical context and understanding of the big-picture policies on which access norms are founded. That context and understanding is best acquired through study of constitutional and common law foundations, where Part I begins.

**Assessment** in the class can be achieved a number of ways. **Periodic assignments** and **class participation** of course can be components of the course. Access law lends itself equally well to assessment by examination and to a final paper. Please contact the author for sample **examinations**. Despite the plethora of iterations of access law in the various jurisdictions of the states and federal government (not to mention other countries), it is not difficult to write an exam that calls on students to employ norms established in the course. Students can examine a problem in reference to the case law they have read and points developed in class discussion. The exam may also focus student efforts by providing typical if ambiguous statutory language, calling on the student to discuss various possible constructions in relation to a fact pattern.

As to a **final paper**, access law is ripe with issues for research. Papers may focus on broad policy questions, or on fine legal questions within jurisdictions. The same plethora of iterations of access law that requires an exam to seek norms rather than specific law means a virtually unlimited range of research subjects. Ten students could choose to examine the same problem, each in a different jurisdiction, if they so desired. I recommend against 50-state surveys, though. They are a great deal of work and are useful for practitioners. But in

inexperienced student hands, the survey tends to degenerate into a mere recitation without much analysis.

Papers prepared in the fall semester or early enough in the spring semester may be submitted to the AEJMC national conference, for which the deadline usually is April 1. Papers prepared on the opposite cycle may be submitted to the Southeast Colloquium, which usually has a deadline very late in the fall semester. Various law reviews, including many specializing in media law, accept papers in different seasons or on a rolling basis, though some bar submission until an author is awarded the degree being sought.

Other written assignment options include a **FOIA request letter** or a short position paper. Students who have been assigned to state jurisdictions may be asked to draft a letter for their assigned jurisdiction to request some particular information they desire. I encourage students to be imaginative. Often they have a good idea what they want. I have had a student who went through a difficult custody battle wanting to know about gender bias in the family courts, and a student who got a speeding ticket from a belligerent officer wanting to know about the officer's disciplinary history. These are productive exercises, because whether the student becomes a practicing lawyer faced with a client or a journalist tackling an assignment, this is the same starting point for information gathering. The students often need guidance: (1) to translate the desire for information into a practical request for likely extant records; (2) to examine the scope of state law in providing access to those records, thus to best strategize the request; and (3) to identify and address the proper record custodian. Finally, a business letter makes for a good writing exercise, especially for students accustomed to communicating through e-mail, text messages, and blog posts.

Short **position papers** may be required to keep students on track through the semester, or staggered as individual assignments. Students may be asked to respond in writing to discussion questions in advance of class based on FOI research in their assigned jurisdictions.

The appendices to this article contain pattern course policies and a syllabus for a three-hour class—the latter marked for possible redaction for a two-hour class, as well as lists of resources which may be handed out to students to get them started in individual research.

### C. **Audiovisual Resources**

There is ample opportunity to add audiovisual material to the classroom experience in an access course. Materials specific to various lessons in the casebook *Law of Access to Government* are suggested in the course of its *Teacher's Manual*. But detailed below are some longer and more generalized materials that can be worked in anytime.

Also, teachers in the spring semester should be cognizant of **National FOI Day**, which has been celebrated in media circles on James Madison's **March 16** birthday since the 1970s. The First Amendment Center puts on an outstanding (and usually free) annual program on or near FOI Day at the Freedom Forum outside Washington, D.C. Sunshine Week has grown from National FOI Day and takes place in March. Events are tracked by the Sunshine Week website,

<http://www.sunshineweek.org/>. News media nationwide can be counted on to emphasize FOI coverage for the week in news and editorials. Some of the organizations listed below will have streaming or podcasting coverage of Sunshine Week programs.

The **Collaboration on Government Secrecy** at the American University maintains a deep library of its proceedings, which include all kinds of interesting and timely panel discussions and speakers. See the podcast selection at <http://www.wcl.american.edu/lawandgov/cgs/podcast.cfm> and webcast selection at <http://www.wcl.american.edu/lawandgov/cgs/webcasts.cfm>. An impressive list of resources with links to yet more material can be found at <http://www.wcl.american.edu/lawandgov/cgs/about.cfm>. CGS holds programs often, so check their calendar if your class meets anywhere near Washington, D.C.

The **National Freedom of Information Coalition** is amassing a collection of "why open government matters" videos at <http://nfoic.org/opengov-videos>. They're great anecdotally, but they might not be short on educational quality for students already initiated into the subject matter. NFOIC sometimes posts videos from its excellent annual proceedings; at the time of this writing, materials from spring 2012 are available here: <http://nfoic.org/2012-foi-summit-panels>. If that link goes away, start at the home page, <http://nfoic.org/>. NFOIC's annual program occurs in late April or May and varies its location.

**OpenTheGovernment.org** puts annual Sunshine Week panels online at [http://www.openthegovernment.org/press\\_room/sunshine\\_week](http://www.openthegovernment.org/press_room/sunshine_week).

The **Office of Government Information Services**, <http://www.archives.gov/ogis/>, has an excellent website that has been growing steadily since the office was created by the OPEN Government Act of 2007. OGIS puts on events and presentations that might interest D.C.-area classes, and some programs are held via teleconference.

The casebook *Law of Access to Government* focuses on U.S. law, because there's plenty of ground to cover there in a single semester. But FOI is an extremely well-developed subject elsewhere in the world, especially in the UK and Canada. Some international materials relating to access as a human right appear in the *Teacher's Manual* in connection with Chapter 1, part A. Introductions to foreign FOIA systems abound online (for example, Scotland's at <http://vimeo.com/21745967>, under two and a half minutes). Perhaps the best of these ever produced is the odd but wonderfully animated "*Re/Quest*," Canada's "Epic Introduction" to its FOIA, sponsored by [Opengovernmentrecords.net](http://www.opengovernmentrecords.net), licensed under Creative Commons, and available online at <http://www.youtube.com/watch?v=FR-dZVBxnKI>. *Re/Quest* and some other fun and educational selections can be found at <http://www.opengovernmentrecords.net/drupal/>.

For instructors teaching in the fall semester and therefore missing all the Sunshine Week hoopla, it might be worth investigating events in connection with **International Right to Know Day on September 28** (check FOIANet, <http://www.foiadvocates.net/>), which is recognized in Canada and around the world, as well as by U.S. organizations including CGS and the Reporters Committee.

While on the subject of introducing the lay citizen to FOI, there are U.S. vessels too, such as PBS: <http://www.pbs.org/opb/historydetectives/video/1481788965/> (just a minute and a half). A fun if painfully simplistic video by Rob Heidrick can be found at <http://www.youtube.com/watch?v=X3CtKpXrE1A>. State-specific items include videos from the Virginia Coalition for Open Government at <http://www.opengovva.org/virginias-foia-the-law/foia-how-to-videos>. Of course Youtube is a source for all kinds of treasures, especially released government materials on every subject under the sun, including declassified CIA videos, so search to your heart's content.

If you care to show your class a movie, pickings are thin. I like the following, though all are documentaries or dramatizations. I'm always open to movie recommendations if you come across something else that works.

- *All the President's Men* (Warner Bros. Pictures & Wildwood Enterprises. 1976): Classic dramatization of journalism; works nicely with Nixon cases—"what's 'Watergate'?" today's students ask—though fits better with a reporting class.
- *GasLand* (HBO Documentary Films & International WOW Co. 2010): Landmark documentary about natural gas drilling, mentioning Vice President Cheney and litigation over the National Energy Policy Development Group—in *Law of Access to Government*, see notes after *AAPS v. Clinton* in chapter 4 and *Cheney v. U.S. District Court* in chapter 10—and implicating access to business records, though most of Josh Fox's investigation was not accomplished with FOI law. *Gasland Part II* debuted on HBO in 2013.
- *The Most Dangerous Man in America: Daniel Ellsberg and the Pentagon Papers* (Kovno Communications 2009): Documentary about Pentagon Papers; helps to emphasize the rule against prior restraint—e.g., in relation to jury reporting in chapter 2 and in *Bryant v. Colorado* at the end of chapter 3—but fits better with media law or First Amendment class.
- *Page One: Inside the New York Times* (Participant Media & History Films 2011): Documentary about newspaper, in part covering breaking news of Wikileaks—notes after *Homefront Confidential* in chapter 6—and companion to book edited by NPR's David Folkenflik.
- *The Pentagon Papers* (City Entertainment, Paramount Pictures, Paramount Television, & FX Network 2003): Made-for-TV dramatization of Pentagon Papers story with James Spader as Daniel Ellsberg and a cheesy romantic subplot; fits better with media law or First Amendment class, but did I mention James Spader?
- *Standard Operating Procedure* (Sony Pictures Classics 2008): Documentary about Abu Ghraib and the prisoner abuse scandal.
- *The U.S. vs. John Lennon* (Lionsgate, VH1 Rock Docs, Authorized Pictures, & LSL Productions 2006): Mostly a documentary about John Lennon as celebrity-activist, but modestly implicates Nixon and FBI investigation.



- *We Steal Secrets: The Story of Wikileaks* (Jigsaw, Global Produce, & Universal Pictures 2013): A documentary. I haven't see it yet. Assign it with the Leigh-Harding book and make a week of it. Or assign the book with its dramatization due out in fall 2013: *The Fifth Estate* (DreamWorks SKG, Reliance Entertainment, Participant Media, Anonymous Content, & FBO), featuring Benedict Cumberbatch as Julian Assange.

Documentaries (such as *Lennon*) sometimes have accompanying websites with additional information, historical context, and materials. To accompany *GasLand*, have a look at NPR's stunning May 2012 series on fracking, <http://www.npr.org/series/151930969/science-and-the-fracking-boom-missing-answers>.

#### D. FOIA Experience—To Audit or Not to Audit?

A natural exercise for a course in access law is to have students *use* the state open government laws—not just to write a request letter, but to hit the pavement and actually try to *get access* in the “real world.” Any veteran of FOI practice in journalism or law knows that the reality of access is far from the theory of the law (see the excerpt in chapter 5 from Amy Sherrill and the FOIArkansas Project), and this divergence is hard to impress on students without giving them a firsthand experience.

Many organizations nowadays are conducting state FOIA audits upon written requests or virtual audits upon web searches. (Exercises in written requests under federal law usually are fruitless because of backlogs, though there's a lesson there too.) These approaches make for viable exercises too, but they're no substitute for the live experience. Unfortunately for nostalgia's sake, information now available online may by state law obviate the obligation of a clerk to respond to an in-person request.

State laws usually allow for real-time, in-person record requests, at least for information not readily available online, making it possible to formulate a live exercise. A live exercise may be modeled after a state audit. Students may be given the freedom to devise requests of interest to them, to develop a “mini-audit” as a class, or to conduct a “mini-audit” as assigned. A mini-audit may be organized across a diversity of state or local offices, or across a geographic diversity, or both. Typical audit fodder are police logs and school budgets.

Whether an experience project is designed as an independent assignment or an organized mini-audit, a protocol should be developed for participants governing matters such as: when requests should be made; what exactly the requester should ask for, and whether the request is to inspect or copy, and for records in what medium and format; whether, how, and under what circumstances the requester should identify himself or herself and his or her motives; whether or when the requester should present a letter in support of a verbal request; how the requester should handle fees; and how the requester should respond to denial or a request for additional time. Requesters should be prepared to monitor and promptly to record details of the experience, including personal observations and verbal and non-verbal communication.

Students may report back on their experiences in writing, through reflection papers, or orally. Undoubtedly they will benefit from exchanging stories that reveal a range of reactions to

in-person requests. I had one student have such an overwhelmingly positive experience that an important public official, delighted by the interest in his work, became a networking contact and reference for the student. I also had a student become so enraged by the stonewalling of his request that he pursued the matter after our class ended and reached a settlement on the eve of filing a lawsuit.

Finally, an important word of caution: A FOIA class experience is not for the instructor with status to lose or with insecurity in academic freedom. When public officials learn that the source of their bother is a self-righteous denizen of the ivory tower, they are likely to find a dean, chancellor, president, or board member to complain to. A public school might frown on an academic exercise that threatens to derail the university's budgetary position, or, even in a private school, threatens to upset town-gown relations or alumni donations. I have declined to employ an experience component when teaching FOI as a visiting professor at public and private schools. At one home institution, I ultimately abandoned the exercise for the heat I took (though students surely learned something from public officials' modest insistence that in the future they be given advance notice of requests). Instructors also should be mindful of their legal and ethical obligations. At my present home institution, I construe a rule against taking positions adverse to the state as precluding my advising of FOIA requesters, for a requester and the state are always potential adversaries in litigation.

FOI audit data are collected by the NFOIC at <http://www.nfoic.org/foi-audits>, and the website has a state-by-state list. If an audit has been done in the state of instruction, it would be beneficial for students to review that material in advance of (or in lieu of) a class-coordinated experience.

In the appendices are instructions for a letter-writing exercise that does *not* require actual submission.

#### **E. Conclusion—Capstone Course**

Access, or freedom of information law, is an exciting course and may be constructed as a capstone course in law school. In journalism, access is an essential skill, the indispensable flip side of free speech, and routinely places journalism ethics in practical context. In law school, freedom of information brings into play students' mastery of constitutional law, defamation and privacy torts, civil rights and public employment, copyright, municipal law, administrative law, civil and criminal procedure, access to justice, and professionalism. Problems in FOI place the journalism student in the position of having to make legal calls and place the law student in the practical position of advising a media client with a range of legal and factual issues in play. The study of access law should be a staple of civic education in America, but is not. Trained journalists and lawyers can make up for that omission; thus the course is rife with rewards for teachers and students.

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- A. Course Policies
- B. Syllabus
- C. Selected Resources
- D. Letter Assignment

## APPENDIX A: COURSE POLICIES

### Freedom of Information Law [Semester and year] Course Policies

Instructor: [instructor]

Office: [office]

Assistant: [assistant]

**Course description.** This course examines citizen access to government under state and federal sunshine laws, including [state of instruction] public records and open meetings, and under common law and constitutional doctrines. Study begins with historic access to courts and juries, with emphasis on the limited access doctrine of the First Amendment, then examines access to the executive branch with special attention to problems such as national security, electronic media, and personal privacy. Course concludes with broad-perspective issues such as separation of powers and privatization.

**Course objectives.** Students in the course will understand the law and policy issues of access to government records and meetings at the state and federal level in the United States, including access through constitutional and statutory vehicles. [Optional: Students will be able to draft a freedom of information act request in light of multistate principles of disclosure, exemption from disclosure, and request procedure.] Students furthermore will understand relevant competing values, such as public accountability and personal privacy, and how those values animate the law and policy of access to government. Students will prepare a paper in the subject area or demonstrate competence through examination.

**Class meetings and office hours.** [Class meetings and office hours.]

**Readings.** There is one required text: Richard J. Peltz-Steele, *The Law of Access to Government* (Carolina Academic Press 2012). Additional readings may be assigned through handouts or web links.

**Attendance and participation.** [Attendance policy.]

This is a small class [or seminar] and will be discussion driven. Accordingly, your participation is essential and expected. Out of respect for your classmates, prepare your reading with care, and please make every effort to minimize your absences.

**Assignments and Assessments.** Your grade will derive from [assessment methods and relative weight]. Your grade may be adjusted up or down for class participation. Class participation means *informed* class participation, demonstrating both comprehension of the assigned material and constructive development of the class discussion. [Final exam detail if applicable.]

[Optional language for seminar:] A seminar provides an opportunity for students and the professor to learn from one another through group interaction. Participation therefore consists

primarily of discussion. In each class, students will examine issues in FOI law and policy. Many topics will be taken up in one hour one day, and in another hour another day, but this approach will gradually allow you to build a thorough understanding of FOI law ranging from the routine but important mechanics of local application, through to big-picture policy questions of national importance.

[Optional:] You will be assigned a jurisdiction of the United States, which you will research during the semester in conjunction with our classwork. Your state research should inform your class participation, and you may be called on to discuss your research findings. You will turn in brief written responses on your research findings weekly, corresponding to questions assigned in class. [Students may be asked to post research findings to a class website.] The exposure of different students to the open government laws of different states will enrich the class experience for everyone by facilitating our conception of a multistate body of access law.

[Optional:] You will be expected to draft a freedom of information act request letter for the class. This assignment is pass-fail and must be passed to earn a passing grade for the course. The assignment must be revised until a passing grade is earned.

[Optional:] Other graded exercises and assignments may be established from time to time. Educational events and programs outside of class may be designated as attendance-required or extra credit-worthy, and content so designated may advantage exam performance.

[Optional:] **Research.** Recommended in support of your state research are the *Open Government Guide* of the Reporters Committee for Freedom of the Press and the Citizen Access Project of the Marion Brechner Center, University of Florida College of Journalism and Mass Communication. These are just starting points, though; you should conduct your own legal research using primary and secondary sources in state law. The website of the National Freedom of Information Coalition also will direct you to state-specific resources. [In teaching JMC students, I ask a law librarian to arrange a special meeting with the students to acquaint them with basic skills in researching a state code and case law.]

[Optional/Example:] **Final paper.** Your final paper should constitute original research in the field of freedom of information law and policy. As graduate-level work, your paper is expected to do more than simply re-hash existing primary and secondary sources. Also, your research should thoroughly cover the field, which is to say that any scholarly sources in the law and humanities that make a significant contribution to research within the scope of your topic should be referenced, whether in a distinct "literature review" or in the course of your analysis and citations. In planning your research, consider that interlibrary loans (ILLs) may take weeks to arrive. Your final product should be of a quality adequate to submit to an academic colloquium.

Papers furthermore must satisfy [details of any program writing requirements].

In the course of the ULWR project, the student must:

- submit a topic proposal and meet with the professor to receive feedback and guidance on selection of the topic and research plan;
- submit an outline and meet with the professor to receive feedback on an outline of the project; and
- submit a full draft of the project and meet with the professor to receive feedback and guidance toward revision.

Intermediate work products (proposal, outline, and draft) will be graded pass-penalty. Lateness or incompleteness will result in a penalty to the final paper grade. Failure to submit a required work product will result in a failing grade on the final paper.

[Optional technical instructions if not program-wide:] All papers should present main text in twelve-point Times Roman or Times New Roman type with double line spacing and ordinary character and word spacing. You may submit text samples for advance approval. Papers with footnotes must set them in ten-point type with single line spacing and ordinary character and word spacing; follow *ALWD* or *Bluebook* style. Alternatively, papers may follow APA style with internal citations and a bibliography. A paper must exceed 5000 words exclusive of footnotes or bibliography.

[Optional sourcing instructions:] If you obtain a source that is not readily available to the instructor through the Internet or university libraries, such as a book obtained through ILL, you must make the source available in pertinent part to the instructor as an attachment to your final paper. For example, pages photocopied from an ILL book may be submitted as attachments to your final paper. Always include authenticating pages, such as the title and copyright pages.

[Optional presentation instructions:] Every student will make a presentation on the subject of your final paper. The length of each presentation will be dictated by the number of students in the class and the time available. In preparing your paper presentation, consider that you are not merely addressing the instructor, who will be somewhat familiar with your topic, but you are educating your classmates about your topic. Acting in the role of educator is a culmination of your experience in an interactive seminar and is an expectation of upper-level students in any course of study. As an observer of others' presentations, please show respect to your classmates by taking an interest in their research as they take an interest in yours.

**Conduct and assistance.** [Conduct and assistance policy.]

**Students with disabilities.** [Institutional disability statement.]

## APPENDIX B: SYLLABUS

### Freedom of Information Law

[Semester and year] Syllabus

[based on two weekly meetings]

[☞ indicates material that may be omitted to shorten course]

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#### Week 1

##### 1-1.

Read Peltz-Steele ch. 1, part A, and part B (*Richmond Newspapers & Notes*).

##### 1-2.

Read Peltz-Steele ch. 1, remainder of part B, and part C (*Globe, Press-Enterprise, Secret Dockets*).

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#### Week 2

##### 2-1.

[Flex period for Labor Day, Martin Luther King Day, or research orientation. Optional: Read open records act and open meetings act in state of instruction.]

##### 2-2.

☞ Read Peltz-Steele ch. 2 (*Juries*).

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#### Week 3

##### 3-1.

Read Peltz-Steele ch. 3, part A (*Court Records Introduction*), part B (*Criminal Court Records*), and part C (*Civil Court Records*).

##### 3-2.

Read Peltz-Steele ch. 3, ☞ part D (*Court Record Access Systems*) and part E (*Mistaken Disclosures*).

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#### Week 4

##### 4-1.

Read Peltz-Steele ch. 4, part A (*FOIA Introduction*) and part B (*Open Records*).

##### 4-3. [Optional: *Paper topics due.*]

Read Peltz-Steele ch. 4, part C (*Open Meetings*) and part D (*Federal-State Interaction*).

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**Week 5****5-1.**

Read Peltz-Steele ch. 5, part A, part B.1-2 (Law Enforcement Introduction, Ongoing Investigations, Uncharged Suspects).

**5-2.**

Read Peltz-Steele ch. 5, part B.3 (Autopsies), part B.4 (Gun Registries), and ☉ part B.5 (Crime Scenes).

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**Week 6****6-1.**

Read Peltz-Steele ch. 5, part C (Prisons).

**6-2.**

☉ Read Peltz-Steele ch. 5, part D (Capital Punishment).

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**Week 7****7-1.**

Read Peltz-Steele ch. 6, part A (Homeland Security Introduction) and part B (State Secrets).

**7-2.**

[Flex period for Presidents' Day, supplemental audiovisual material, or midterm exam.]

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**Week 8****8-1.**

Read Peltz-Steele ch. 6, part C (GIS) and part D (Military Operations).

**8-2. [Optional: *Paper outlines due.*]**

☉ Read Peltz-Steele ch. 6, part E (Detentions) and part F (Secret Evidence).

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**Week 9****9-1.**

Read [open records act and open meetings act in state of instruction].

**9-2.**

Read Peltz-Steele ch. 7, part A (Open Records Introduction) and part B ("Who and What").

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**Week 10****10-1.**

Read Peltz-Steele ch. 7, part C (Open Records Exemptions).



10-2.

☛ Read Peltz-Steele ch. 7, part D (Open Records Mechanics) and part E (Open Records Management).

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**Week 11**

11-1. [Optional: *Paper drafts due.*]

Read Peltz-Steele ch. 8, part A (Open Meetings Introduction) and part B (Open Meetings Definition).

11-2. **Wed., 28 Mar., 1:00-2:20 p.m.**

Read Peltz-Steele ch. 8, part C (Exemptions), ☛ part D (Mechanics), and ☛ part E (Interplay of Open Meetings and Open Records).

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**Week 12**

12-1.

Read Peltz-Steele ch. 9, part A (Electronic Access Introduction), part B (Neutrality and Compatibility), and part C (Searches).

12-2.

Read Peltz-Steele ch. 9, part D (Protocols) and part E (Fees).

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**Week 13**

13-1.

Read Peltz-Steele ch. 9, part F (Privacy) and ☛ part G (Meetings).

13-2.

☛ Read Peltz-Steele ch. 10, part A (Scope Introduction) and part B (Separation of Powers).

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**Week 14**

14-1.

Read Peltz-Steele ch. 10, ☛ part C (Constitutional Interests) and part D (Privatization).

14-2.

[Flex period for supplemental audiovisual material, class presentations, or final exam.]

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**Week 15 [if applicable]**

15-1.

[Flex period for supplemental audiovisual material, class presentations, or final exam.]

15-2.

[Flex period for supplemental audiovisual material, class presentations, or final exam.]

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[Optional: *Final exam, final paper deadline.*]

## APPENDIX C: SELECTED RESOURCES

### Web and Published Resources in Access Law and Policy

#### Websites

(see nfoic.org for state-specific links)

- Africa Freedom of Information Center, <http://africafoicentre.org/>
- American Library Association, <http://www.ala.org/>
- American Society of Access Professionals, <http://www.accesspro.org/>
- American Society of Newspaper Editors, <http://www.asne.org/>
- Americans for Tax Reform, <http://atr.org/>
- Article 19: Global Campaign for Free Expression, <http://www.article19.org/>
- Black Vault, <http://www.theblackvault.com/>
- Campaign for Freedom of Information, <http://www.cfoi.org.uk/>
- Center for Democracy & Technology, <http://www.cdt.org/>
- Center for Public Integrity, <http://www.publicintegrity.org/>
- Citizens for Responsibility and Ethics in Washington, <http://www.citizensforethics.org/>
- Collaboration on Government Secrecy, <http://www.wcl.american.edu/lawandgov/cgs/>
- Cryptome, <http://cryptome.org/>
- Electronic Frontier Foundation, <http://www.eff.org/>
- Electronic Privacy Information Center, [http://www.epic.org/open\\_gov/](http://www.epic.org/open_gov/)
- Federation of American Scientists, <http://www.fas.org/>
- First Amendment Center, <http://www.firstamendmentcenter.org/press/information/index.aspx>
- Florida First Amendment Foundation, <http://www.floridafaf.org/>
- FOI Advocate (NFOIC blog), <http://foiadvocate.blogspot.com/>
- FOI FYI (SPJ blog), <http://blogs.spjnetwork.org/foi/>
- FOIA Project, <http://foiaproject.org/>
- Freedom of Information Advocates Network, <http://www.foiadvocates.net/>
- Freedominfo.org, <http://www.freedominfo.org/>
- Global Integrity, <http://www.globalintegrity.org/>
- Global Transparency Initiative, <http://www.ifitransparency.org/>
- Government Attic, <http://governmentattic.org/>
- Investigative Reporters and Editors, <http://www.ire.org/>
- James Madison Project, <http://www.jamesmadisonproject.org/>
- MAPLight.org, <http://maplight.org>
- **Marion Brechner Center for Freedom of Information, University of Florida College of Journalism and Mass Communication, <http://brechner.org/>, especially the Citizen Access Project, <http://www.citizenaccess.org/> (key resources)**
- National Archives Office of Government Information Services, <http://www.archives.gov/ogis/>
- **National Freedom of Information Coalition, <http://www.nfoic.org/> (check for state-specific links)**
- National Security Archive, <http://www.gwu.edu/~nsarchiv/>
- Newspaper Association of America, <http://www.naa.org/>
- OMB Watch, <http://www.ombwatch.org/>
- Open Congress, <http://www.opencongress.org/>
- Open Society Foundations, <http://www.soros.org/>
- OpenSecrets.org, <http://www.opensecrets.org/>
- OpenTheGovernment.org, <http://www.openthegovernment.org/>
- Privacy International, <http://www.privacyinternational.org/>
- Project on Government Oversight, <http://www.pogo.org/>
- Public Citizen, <http://www.citizen.org/>
- Public.Resource.Org, <http://public.resource.org/>

- **Reporters Committee for Freedom of the Press**, <http://www.rcfp.org/>, especially the *Open Government Guide*, <http://www.rcfp.org/ogg/index.php> (key resources)
- Society of Environmental Journalists, <http://www.sej.org/>
- Society of Professional Journalists; <http://www.spj.org/>
- Sunlight Foundation, <http://www.sunlightfoundation.com/>
- Sunlight Labs, <http://www.sunlightlabs.com/>
- Sunshine in Government Initiative, <http://www.sunshineingovernment.org/>
- Sunshine Week, <http://www.sunshineweek.org/>
- Transactional Records Access Clearinghouse, <http://trac.syr.edu/>
- Transparency International, <http://www.transparency.org/>, especially the USA Chapter, <http://www.transparency-usa.org/>
- U.S. Department of Justice Office of Information Policy, <http://www.justice.gov/oip/oip.html>, and Open Government Home Page, <http://www.justice.gov/open/>
- WikiFOIA, <http://wiki.foia.pbworks.com/>
- WikiLeaks, <http://wikileaks.org/>

### Published Books

- Sissela Bok, *Lying: Moral Choice in Public and Private Life* (Vintage updated 1999).
- Sissela Bok, *Secrets: On the Ethics of Concealment and Revelation* (Vintage Rei 1989).
- David Brin, *The Transparent Society: Will Technology Force Us to Choose Between Privacy and Freedom?* (Perseus 1999).
- Philip Coppel, *Information Rights: Law and Practice* (Hart 3d ed. 2010) (Australia).
- Harold Cross, *Peoples Right to Know* (Ams Press rpt. 1953).
- Donna A. Demac, *Liberty Denied: The Current Rise of Censorship* (Pen Am. Ctr. 1988).
- Devolpi, et al., *Born Secret: The H-Bomb, the Progressive Case and National Security* (Pergamon Policy Studies on Business and Economics, Pergamon 1981).
- Daniel Ellsberg, *Secrets: A Memoir of Vietnam and the Pentagon Papers* (Viking 2002).
- Franck & Weisband, *Secrecy and Foreign Policy* (1986).
- Simson Garfinkel, *Database Nation: The Death of Privacy in the 21st Century* (O'Reilly Media 2001).
- P. Stephen Gidiere III, *The Federal Information Manual* (American Bar Association 2006).
- John Greenewald, Jr., *Beyond UFO Secrecy* (Galde Press 2d ed. 2008).
- Morton Halprin & Daniel Hoffman, *Freedom Vs. National Security: Secrecy and Surveillance* (Chelsea House 1977).
- Daniel Hoffman, *Governmental Secrecy and the Founding Fathers: A Study in Constitutional Controls* (Contributions in Legal Studies, Greenwood Press 1981).
- Annie Jacobsen, *Area 51: An Uncensored History of America's Top Secret Military Base* (Little, Brown 2011).
- Penn Kimball, *The File* (Harcourt Brace Jovanovich 1983).
- David Leigh & Luke Harding, *WikiLeaks: Inside Julian Assange's War on Secrecy* (PublicAffairs 2013).
- Michael R. Lemov, *People's Warrior: John Moss and the Fight for FOI and Consumer Rights* (Lexington Books 2011)
- Victor Marchetti, *CIA & Cult of Intelligence* (Knopf 1974).
- Bruce P. Montgomery, *Subverting Open Government: White House Materials and Executive Branch Politics* (Scarecrow Press 2005).
- Daniel Patrick Moynihan, *Secrecy: The American Experience* (Yale U. Press 1999).
- Robert M. Pallitto & William G. Weaver, *Presidential Secrecy and the Law* (Johns Hopkins Univ. Press 2007).
- Andrew Patner, *I.F. Stone: A Portrait* (Anchor rpt. 1990).
- Mitchell W. Pearlman, *Piercing the Veil of Secrecy: Lessons in the Fight for Freedom of Information* (LawFirst Publishing/Connecticut Bar Association 2010).

- Eve Pell, *Big Chill: How the Reagan Administration, Corporate America, and Religious Conservatives are ...* (Beacon Press 1986).
- Suzanne J. Piotrowski, ed., *Transparency and Secrecy: A Reader Linking Literature and Contemporary Debate* (Lexington Books 2010).
- Dana Priest & William M. Arkin, *Top Secret: The Rise of the New American Security State* (Little Brown 2011).
- Alasdair Roberts, *Blacked Out: Government Secrecy in the Information Age* Cambridge Univ. Press 2006)
- Jeffrey Rosen, *The Unwanted Gaze: The Destruction of Privacy in America* (Vintage 2001)
- Jeffrey Rosen, *The Naked Crowd: Reclaiming Security and Freedom in an Anxious Age* (Random House 2004)
- William Shawcross, *Sideshow: Kissinger, Nixon and the Destruction of Cambodia* (André Deutsch 1979, rev. 1986).
- Barry Siegel, *Claim of Privilege: A Mysterious Plane Crash, a Landmark Supreme Court Case, and the Rise of State Secrets* (Harper 2008).
- Frank Snepp, *Decent Interval: An Insider's Account of Saigon's Indecent End Told by the CIA's Chief Strategy Analyst in Vietnam* (U. Press Kan. 25th anniv. ed. 2002).
- Frank Snepp, *Irreparable Harm: A Firsthand Account of How One Agent Took on the CIA in an Epic Battle over Free Speech* (U. Press Kan. rpt. 2001).
- I.F. Stone, *The Trial of Socrates* (Anchor rpt. 1989).
- Sanford J. Ungar, *The Papers and the Papers: An Account of the Legal and Political Battle over the Pentagon Papers* (E.P. Dutton 1972).
- Jon Wiener, *Gimme Some Truth: The John Lennon FBI Files* (U. Cal. Press 1999).
- James Russell Wiggins, *Freedom or Secrecy* (Oxford U. Press rev. 1964).

## APPENDIX D: LETTER ASSIGNMENT

### FOIA/ORA Letter Assignment

In anticipation of drafting your FOIA letter, please choose any one of the 50 states or D.C., and read that state's open records act (FOIA/ORA). You might check here for citations:

<http://nfoic.org/state-freedom-information-laws>

But be sure to look up the law on Westlaw or Lexis to make sure you're seeing the most up-to-date version of the statute.

Then put yourself in the shoes of someone living in that state. You may draw on your own personal or professional experiences, or something you have read in the media or in class. Think of a record that you would like to request. Investigate and determine, to the extent possible, the custodian of that record and his or her address.

The next step in your FOIA letter drafting assignment is to draft a letter. Reference what you want to obtain through your request and address the letter to the appropriate government agent.

You may start with the automatic FOIA letter generator available from the RCFP:

<http://www.rcfp.org/foia>

But the form letter is not perfect. Part of this exercise is learning how to improve on what forms provide. Make sure that your final letter contemplates the many issues that arise in FOIA/ORA practice, including (1) specificity of request, (2) custodianship, (3) record medium and format, (4) exemption and redaction, (5) time of production, (6) fees and waivers.

Whether or not you begin with a form, prepare and submit your letter in a word processing file (Word, WordPerfect, OpenOffice, etc.) to facilitate editing. You should prepare your letter in accordance with norms appropriate to a business letter.

You will not be asked to send the letter. But as you set the terms of your request, be realistic about what you would want it to say. If you want to make any comments to the instructor about the choices you made in drafting your letter, you may do so through footnotes or endnotes, or in a separate document.