

CASE #2

FOIA Request

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OVERVIEW:

The [SAA Code of Ethics for Archivists](#) devotes a section to access and use. Archivists should “minimize restrictions and maximize ease of access.” What happens when the archivist isn’t working in a collecting institution, but rather for the agency that creates and maintains the records? What if the archival value of access conflicts with an agency or organization’s culture? Overt or subtle, pressure can be brought to bear on an archivist to restrict access to available records.

The code goes on to say, “In all questions of access, archivists seek practical solutions that balance competing principles and interests.” How does the archivist navigate the situation when an organization’s corporate culture is not one of easy access? Can balance be reached when it is clear management has one vision of access and the ethical archivist has another?

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KEYWORDS:

Freedom of Information Act | Open Records | Access | Ethical Conflict | Organizational Policy | Access Control | Organizational Culture | Professional Judgment | Public Policy | User Relationships

Introduction and Institutional Context

This case study is anonymized and the ethical dilemma a compilation of specific events.

The Western Outdoors Laboratory Facility (WOLF) is a federal governmental agency. It is part of the Department of the Interior, Fish and Wildlife Service (FWS) and has been in existence since the 1920s. WOLF is a small research based agency focused on the interactions between humans and wildlife. Begun mainly to develop animal toxicants, WOLF shifted focus over the years and current research concentrates on biological studies of various animals and development of non-lethal methods of control. WOLF is part of a larger agency within the FWS that carries out animal control, often using the methods developed by the research facility.

Both WOLF and its parent agency have been the subject of controversy since almost the beginning of the agency. Many of the WOLF facilities house research animals. The rise of environmental and animal welfare organizations in the 1960s and 1970s increased scrutiny and criticism of research methods standard at that time. In the 1990s, militant animal rights groups firebombed two of WOLF's research facilities and harassed staff of its parent agency. By the mid-2000s, it became agency policy when issuing published reports to withhold specific identifying information of WOLF staff, its parent agency, and cooperators to lessen potential harassment by animal rights organizations.

The organizational culture is one of cautious openness to the public. There are concerns regarding opinions and actions by animal rights groups. Given the strident nature of some animal rights organizations and others critical of the agency, there is a strong sense of "they just don't understand what we do and aren't willing to listen." Although incidents of violence have not occurred in the last two decades, harassment of employees and strident media attacks on WOLF and its parent agency continue.

In addition, WOLF is a science-based institution and does not want to release study information until the research is complete. Working with private companies, WOLF developed various animal-control products over the years and conducts contract research for various government and nongovernment entities. WOLF cannot ethically or legally release contract data or proprietary data done with private entities. Overall and historically, the agency has been slow to disclose research activities.

As a federal agency, WOLF is subject to Freedom of Information Act (FOIA) requests. Specific procedures are in place to dictate handling FOIAs. The request comes from the parent agency to WOLF. Once WOLF receives a FOIA, it has five working days to find the information, although extensions may be granted. A requestor, however, does not receive the information in the five-day time frame. WOLF provides the requested information to the parent agency that then reviews it and passes it on to FWS for final review, and then the information is released to the requester.¹

¹ For general information regarding FOIAs, see <http://www.foia.gov/>.

WOLF employs a dual role archivist and records manager, Sylvia Smith, who is responsible for coordinating FOIA requests. When WOLF receives a request, Ms. Smith gathers responsive information and records. Prior to sending the material on to the parent agency, there is an internal WOLF review process that involves the Director and/or Assistant Director, who worked as research scientists before becoming administrators.

The policy at WOLF and other federal agencies is to give the FOIA requester exactly what he/she requests, nothing more and nothing less. FOIA does not require agencies to do research for the requestor, to analyze data, to answer written questions, or to create records in response to a request. If Ms. Smith needs clarification on the request, it must be sent through various channels that mimic the response process, unlike typical archival reference requests (e.g., research interview) and often making it difficult to ferret out exactly what the requestor needs or wants.

Narrative

Ms. Smith received a FOIA request that involved research study results on pocket gophers from 1970 to 1980 in the states of Colorado and Wyoming. Although such studies should all theoretically reside in the WOLF archives, the reality is they do not. In the past, scientists often kept their study information in their offices and/or only passed the records on when they retired or left the agency. Over the years, WOLF completed a fair number of studies on pocket gophers in Western states, many involving toxicants. In addition, from that time frame, not all studies were published, meaning data results reside only in internal reports.

For the FOIA, Ms. Smith found a substantial number of published and unpublished studies. She was also quite certain, given her extensive knowledge of WOLF records and history, that other reports existed. Ms. Smith thus asked several scientists within the agency if they were aware of such studies and received small amounts of info. She realized that two scientists most likely held records needed for the FOIA. Both scientists initially asked who requested the information and were clearly not pleased with the answer as the scientists knew the organization and felt it was critical of WOLF work. One reluctantly passed on several pertinent reports and the other said he thought he did not have anything and would not look.

Ms. Smith then talked with the WOLF Assistant Director in the quest to find all records, as she was convinced several other studies were conducted without the results going to the archives. She explained that she was certain that the scientist who denied having study records did in fact have them. For FOIA requests, Ms. Smith often consulted with the Director or Assistant Director to tap into their institutional knowledge regarding who had worked on which studies and where the data may reside.

The Assistant Director questioned Ms. Smith about her pursuit of records. He asked her why she was still looking. His opinion was that the requestor would have plenty of records and further exploration was unnecessary. The Assistant Director saw no reason to further “bother” the scientist, particularly since the researcher already asserted he did not believe he had any pertinent records.

Conclusion

Ms. Smith, after the discussion with the WOLF Assistant Director, stopped looking for additional records to answer the FOIA. Within the five working days she put together the published and unpublished reports, received WOLF management approval, and sent the materials to the next level of the FOIA process. Ms. Smith took careful notes during her FOIA search, particularly noting where additional materials could be, and kept those in the case file. In some instances, FOIA requests are returned to WOLF if the requestor needed more information or wanted clarification of the response and Ms. Smith's notes could potentially be helpful for that purpose.

Discussion

Questions

- Did Ms. Smith adequately answer the FOIA request? Should Ms. Smith have continued to look for additional records?
- Was the administration complicit in a lie regarding records? Was the Assistant Director correct in assuming the question about records was asked and truthfully answered, and no further concern was merited?
- Was taking notes in the case file regarding the archivist's search/process necessary?

Suggested Answers

Ms. Smith followed the letter of the FOIA law by providing records to the requester that were known to exist at her institution. She asked questions of appropriate records creators (scientists), and despite believing that additional records existed, she had no actual proof to counter the statement of the scientist. Nor did she have any way to physically look through records not in the archives.

The administration's response was not completely in line with FOIA because the Assistant Director did not compel the scientist to look further for records. The scientist contended he did not have any records, although he also said he would not look for any. Ms. Smith raised her concerns with WOLF management and management ruled that enough had been done. Given the institutional culture of secrecy, Ms. Smith did the best she could to answer the FOIA while comporting with management's decision.

Ms. Smith felt the need to keep notes in the WOLF FOIA file in case the request came back to the agency, which can happen. There is no prohibition in keeping notes in a working file. In addition, FOIA records do not have a permanent retention nor did WOLF hold the record copy of the specific FOIA.