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**Civics 101**

**The Freedom of Information Act**

**Nick Capodice:** [00:00:08] This is Civics 101, I'm Nick Capodice. .

**Hannah McCarthy:** [00:00:10] And I'm Hannah McCarthy and today we're talking FOIA. .

**Nick Capodice:** [00:00:13] Now Hannah, you went to journalism school. .

**Hannah McCarthy:** [00:00:15] I did indeed go to J-school. .

**Nick Capodice:** [00:00:17] FOIA is something that if you're not a journalist does not probably feature into your everyday life. But if you're a journalist it does? .

**Hannah McCarthy:** [00:00:24] I Think it does if you're a certain kind of journalist. Do you know what FOIA stands for?

**Nick Capodice:** [00:00:27] I Believe it stands for freedom of information act. .

**Hannah McCarthy:** [00:00:30] Yes. Basically it allows you to access federal documents, public documents.

**Nick Capodice:** [00:00:36] Can anybody do it?

**Hannah McCarthy:** [00:00:45] Yeah anybody can do it... You want to do it? .

**Nick Capodice:** [00:00:40] Yeah let's do it... Okay government agency, let's do ATF. .

**Hannah McCarthy:** [00:00:49] So this is easy right. We're on FOIA dot gov, F-O-I-A dot gov. So whose email should we request? .

**Nick Capodice:** [00:00:57] Who's the head of the ATF...Oh Here it is. Click the button Hannah... Success! "Your FOIA request has been created and is being sent to the Bureau of Alcohol Tobacco Firearms and Explosives."

**Hannah McCarthy:** [00:01:09] So we're going to hear back in the coming weeks, all right. All right. .

**Nick Capodice:** [00:01:14] So who we going to talk to today about FOIA?

**Hannah McCarthy:** [00:01:17] Today Is Jason Leopold. He is an investigative reporter for BuzzFeed, and I hear he's like the king of FOIA.

**Nick Capodice:** [00:01:25] Oh I can't wait...

**Nick Capodice:** [00:01:31] Do you have sort of a rough estimate of how many FOIA's you've done in your time?

**Jason Leopold:** [00:01:35] Yeah I'm at up to a little over 3500. Yeah it's a lot that's over the course of let's see about nine years. I've sued the government about more than 50 times. .

**Hannah McCarthy:** [00:01:50] Can We just start by asking what the purpose of the Freedom of Information Act is?

**Jason Leopold:** [00:01:57] Sure. The Freedom of Information Act is now a more than half century old law that allows anyone anywhere in the world to petition the U.S. government various U.S. government agencies for documents. It's essentially just to keep a check on the federal government on what's going on behind the scenes. What's great about the Freedom of Information Act is that you can ask these federal government agencies for any type of record. They don't have to give it to you. But you get to ask for it and to they have to justify the withholding of some of these records if they decide not to give it up to the requester. .

**Nick Capodice:** [00:02:41] Is there one big FOIA office or does every agency have their own FOIA office?

**Jason Leopold:** [00:02:45] Every Government agency has its own FOIA office correct.

**Hannah McCarthy:** [00:02:49] So Who in the government can be FOIA'd and who cannot be FOIA'd?

**Jason Leopold:** [00:02:54] You Can pretty much FOIA everyone who works for the government. I mean every agency will try to get away with you know redacting the names of certain people. The White House is exempt from FOIA. Congress is exempt from FOIA. At The NSA and the CIA, there's something known as the NSA Act and the CIA act and that is essentially what that means is that those agencies are virtually exempt from FOIA because everything that they do is classified. .

**Hannah McCarthy:** [00:03:20] What is the process on the government side when somebody submits a FOIA request. What do they do next?

**Jason Leopold:** [00:03:27] It's a good question and it was difficult to tell exactly what happens and so it wasn't until I filed a what I like to refer to as a meta-FOIA which is filing for the processing notes. So I wanted to know what happens after you receive my FOIA request. And what happens is is that the you know the analyst gets the FOI request they send it out to the appropriate -- First they try to interpret it right. They'll try to interpret and that can be kind of dangerous if your request is not crafted clearly. They will try to figure out what exactly it is you want where those records would be stored. Once they retrieved the records then they have to then review those records to determine you know if there's any classified information or any information that should remain private. .

**Nick Capodice:** [00:04:17] So The burden of proof is on the government agency to prove that what they would release would endanger the nation as opposed to you having to prove that? .

**Jason Leopold:** [00:04:25] It's essentially not the burden of proof they can simply just say it. The government agency can say this will interfere with law enforcement proceedings. This will reveal sources and methods and they don't have to say anything else but the requester can then file an appeal. There is a process by which you know you can go through various steps you can appeal you can you go through the appeals you can tell that the agency I want you to do another search you know or you're providing them with additional information and essentially trying to get them to ultimately to release those records.

[00:04:59] A real incident that happened this week is I got a release of documents from the Secret Service and in the disclosure letter the Secret Service said based on your appeal we did another search and we found 234 pages of additional documents. So it's a tedious process. I mean all of these steps by which a requester has to take to try and pry loose records to keep a check on the government on actual government activity is incredibly difficult and painstaking. .

**Nick Capodice:** [00:05:36] So Do you think that the process is sort of Byzantine and labyrinthine by design as a method to discourage people from submitting FOIA?

**Jason Leopold:** [00:05:45] I don't believe that you know that any of these agencies or any of the people that are involved in the in the crafting of the law were conscious of like hey let's make it really difficult you know to do this. I do think however one way in which agencies on the state level and on the federal level do make it difficult is through fees. A real example of that is during the during the protests in Ferguson following the shooting death of the African-American teenager Michael Brown. I filed a request with the with police and with local government officials for e-mails and other records about their discussions about Michael Brown. And they told me that it would even before they could conduct a search I had to give them a deposit of about 25 hundred dollars. And we called their bluff we said okay we'll give it to you. We give them twenty five hundred dollars. They turned over nine, eight or nine e-mails.

[00:06:40] You know they didn't give me change from that but from that you know from that they justified why those eight or nine e-mails cause you know cost that much money so most people just don't pay it. And in some instances journalists you know because this is such a tedious process throw up their hands and say I'm not going to be bothered with it. .

**Hannah McCarthy:** [00:06:59] OK We've got to take a quick break but then we'll be back to continue our conversation with Jason Leopold. .

**Nick Capodice:** [00:07:13] We're Back and we're talking with Jason Leopold investigative reporter at BuzzFeed News about FOIA. .

**Hannah McCarthy:** [00:07:18] Yeah so we went onto FOIA dot gov and we submitted a FOIA request as we mentioned. So what we did is we said we want and you can tell us whether or not we went about this entirely the wrong way we wanted the deputy director of the ATF, Thomas Branden's, any emails of his containing the words New Hampshire and Hennesy. .

**Jason Leopold:** [00:07:38] Okay Yeah. No that's great. Did you give a timeframe? .

**Nick Capodice:** [00:07:41] No We didn't. We didn't know what we're doing. .

**Jason Leopold:** [00:07:44] Yeah. Yeah. So normally putting or trying to put in a time frame is a good way to simply speed up the process and that is really key when it comes to FOIA is that there is a backlog and the reason that there's a backlog obviously is that you have a lot of people filing requests not just journalists. And to be clear journalists make up a sliver of the hundreds of thousands of requests that are filed each year. Most of those requests come from commercial requesters people who take these documents and resell them. You know it could be law firms corporations looking for info on their competitors. Journalists are truly just a sliver of you know of the requests that go in.

**Nick Capodice:** [00:08:30] Could you give me a hypothetical of one of those corporate interests-- What kind of thing would a corporation FOIA for profit?

**Jason Leopold:** [00:08:39] It Could be information on say S.E.C. investigations. The FCC actually gets a lot of requests from people who are looking for info on other businesses investigations and reselling it. Essentially it's it's become it's own business in a way for you know for some for some investigators researchers who will simply sell this to you know other corporations sell this information on there you know maybe it's their competitors maybe it's on you know the USDA the FDA often get requests from commercial requesters as well. It really could be about anything. .

**Hannah McCarthy:** [00:09:16] Now I'm very curious. Of course these governmental entities are law bound to provide information. Ostensibly Yes. Do you have any sense as to whether or not a commercial entity who FOIAs something may be more likely to get that in a timely manner than somebody who's going to take that information and give it to the public. .

**Jason Leopold:** [00:09:43] It's a good question. No I'm pretty confident that that journalists are going to get probably some precedent. And here's why: you can ask for expedited treatment of your request. Meaning that you know dear agency I want to get to the top of the pile and here's why I have. There is an urgent need to inform the public about actual government activity. Commercial requesters can't really do that. They can't ask for that because there's no there's no one for them to inform. No.

**Nick Capodice:** [00:10:16] I pretended like I knew what you were talking about-- can you explain to me why you laughed when we said that government agencies are law bound to respond to these requests? .

**Jason Leopold:** [00:10:24] Because they never ever adhere to the law and the law meaning the Freedom of Information Act. Essentially states that you know follow the law. Release these records. But there's no deterrent if they don't. Right. Nobody's going to be prosecuted. Nobody's going to be fine. Nobody's going to jail. So they don't have to and they don't. And you know some of the agencies that are so notorious for in my personal opinion obstructing the law when it comes to FOIA, you know the FBI... The FBI... And the FBI. .

**Nick Capodice:** [00:11:01] Why Is it so important though why is government transparency so important to our democracy? .

**Jason Leopold:** [00:11:08] I can hold up a number of stories that I have written as a result of, thankfully as a result of some of the documents leaked that I've obtained by FOIA you know for example behind the scenes look at how the CIA obtained the authority to assassinate a U.S. citizen abroad. If you want to see what was happening behind the scenes at Guantanamo which was how detainees are treated how they're force fed how their conditions of their confinement. It was thanks to the Freedom of Information Act. Prior to that you know this information was classified. How the Department of Homeland Security placed agents secretly into protests in Baltimore after the death of Freddie Gray. That was thanks to you know the Freedom of Information Act. Perhaps most notoriously, it was my Freedom of Information Act that forced the release of Hillary Clinton's e-mails--

**Hannah McCarthy:** [00:12:04] That's a big deal Jason.

**Nick Capodice:** [00:12:06] That was you?

**Jason Leopold:** [00:12:07] That was me. Did you guys not know that? Yeah. Yeah. That was me. In 2014 November 2014 I filed a Freedom of Information Act at the Department of State requesting all of Hillary Clinton's emails and other records and I did so because it became clear that she was going to be the you know the Democratic front runner for president. And I felt that it was important to provide the public with information about how our nation's top diplomat conducted foreign policy. Unfortunately the scandal over the use of a private e-mail server obscured that. And as such you know never really had that opportunity to show what was in the e-mails and why they were so substantive and important. .

**Nick Capodice:** [00:12:56] You're quite a navigator of the FOIA process. Do you think that it could be better. Do you think that there's a better way? Or do you like this process?

**Jason Leopold:** [00:13:05] Oh there's always a better way. You know the better way would be to streamline the process right. It would be to hire more people you know who could work at these agencies processing these these requests. Another better way is when you want to send a FOIA request to the CIA that you don't have to send it via fax. You know the CIA you can either mail it or send it via a fax now. Fax machine! Sometimes, by the way their fax machine is broken and you're stuck literally finding a stamp and mailing it.

[00:13:42] So with some of these agencies it's a matter of just bringing them into the 21st century and saying accept this request via e-mail process it that way. .

**Nick Capodice:** [00:13:52] Is there anything that you want the world to know about FOIA that maybe we don't already?

**Jason Leopold:** [00:13:57] FOIA is an incredibly powerful tool. It is the way in which we can keep government agencies you know on their toes and let them know that there is a check on their power. And I think that more journalists more members of the public should utilize it. And it's critical to an informed democracy. That's my soapbox speech about it.