



Survey of Journalists' Views on "Release to One, Release to All" Under the federal Freedom of Information Act

August 30, 2016

I. Introduction

In July 2015, seven federal agencies announced that they would begin a six-month pilot program whereby records released in response to a request made under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), would also be posted online for the public.¹ According to officials at the Department of Justice, the policy—known as "Release to One, Release to All"—is part of a larger "grand vision" of proactively providing government information to the public.² The results of the pilot program were published in June of 2016.³

One month later, at the first meeting of the Chief FOIA Officers' Council, the head of the Justice Department's Office of Information Policy ("OIP") told agency officials they should begin preparing for the roll-out of "Release to One, Release to All" across the federal government.⁴ OIP will be issuing a formal policy regarding the "Release to One, Release to All" program by January 1, 2017.⁵

Following the announcement of the "Release to One, Release to All" pilot program, some journalists expressed concern that it would negatively affect their ability to report by giving other journalists immediate access to on documents they requested, and sometimes fought hard to obtain. "The government is now giving away your FOIA scoops", one article read.⁶ But other journalists expressed support for the policy, noting that it could lead to benefits for both them

¹ Adam A. Marshall, *Federal agencies announce limited trial of "release for one, release to all" FOIA policy*, Reporters Committee for Freedom of the Press (Jul. 9, 2015), <http://rcfp.org/browse-media-law-resources/news/federal-agencies-announce-limited-trial-release-one-release-all-foia>.

² Adam A. Marshall, *When does the public get public records?*, *The News Media and the Law* (Fall 2015), <https://www.rcfp.org/browse-media-law-resources/news-media-law/news-media-and-law-fall-2015/when-does-public-get-public-r>.

³ *Proactive Disclosure Pilot Assessment*, U.S. Dep't of Justice (June 2016), https://www.justice.gov/oip/reports/proactive_disclosure_pilot_assessment/download.

⁴ Luis Ferre Sadurni, *Chief FOIA Officers Council meets for the first time*, Reporters Committee for Freedom of the Press (Jul. 25, 2016), <https://www.rcfp.org/browse-media-law-resources/news/chief-foia-officers-council-meets-first-time>

⁵ Memo from Melanie Ann Pustay, Director, Office of Information Policy, to Agency Chief FOIA Officers (Jul. 27, 2016), https://www.justice.gov/oip/cfo_council/memo_agency_cfos_release_to_all_presumption/download

⁶ Benjamin Mullin, *The government is now giving away your FOIA scoops*, Poynter (Jul. 10, 2015), <http://www.poynter.org/2015/the-government-is-now-giving-away-your-foia-scoops/356961/>

and the public at large. They also doubted whether online release of records they requested would have an impact on their reporting, especially if there was a delay between when they received the records and when those records were posted publicly.

To date, however, there has been no attempt to obtain a more comprehensive picture of how representatives of the news media view a “Release to One, Release to All” policy and how they believe it might affect their work. Accordingly, in advance of OIP’s anticipated guidance and implementation of the program, the Reporters Committee for Freedom of the Press conducted a survey intended to gather such data from the journalism community.⁷ More than 100 individuals identifying themselves as journalists responded to the survey, the results of which are presented in this report.

II. Executive Summary

Respondents to the Reporters Committee’s survey were in favor of a “Release to One, Release to All” policy if it is implemented with a delay between release to the requester and release to the public. While a quarter of respondents supported the policy unconditionally, almost 60% support it only with conditions, such as a delay period. Only 13 out of more than 100 respondents who self-identified as journalists do not support the policy at all. The survey results did not show significant differences among journalists who self-identified as investigative journalists, or by mode of publication.

Many respondent journalists indicated that they believe there would be detrimental effects if others can immediately access records they receive in response to a FOIA request. Respondents indicated that not only do they carefully craft such requests, drawing upon sources and journalistic expertise, but they also spend substantial time and money pursuing them. If a third party is allowed to “scoop” the results of those efforts, not only do the incentives for filing FOIA requests decline, but the quality of stories might suffer.

At the same time, respondents identified a number of potential benefits of a “Release to One, Release to All” policy, including increased access to federal records for those with limited resources, eliminating duplicative requests, and having experts in different subject areas analyze the same records. Many also expressed doubt that access to records requested under FOIA alone would enable other reporters to scoop a story.

One possible way to address journalists’ concerns is to implement a delay between release of records to the requester and to the public. Although there was no clear consensus among respondents on a preferred length of delay, a holistic evaluation of responses to the Reporters Committee’s survey indicates that a delay of between a week and a month should be sufficient to reduce what journalists perceive to be the most negative effects of the policy. Other suggestions included varying the length of the delay based on the volume of responsive records.

Respondents also indicated that a “Release to One, Release to All” policy could affect their incentives for filing FOIA lawsuits. The concerns are largely the same as with the policy in general (getting “scooped” by a competitor), but are magnified due to the increased cost and

⁷ *Reporters Committee launches survey of journalists on “Release to One, Release to All” FOIA policy* (Aug. 2, 2016), <https://www.rcfp.org/reporters-committee-launches-survey-journalists-release-one-release-all-foia-policy>.

efforts associated with litigation. More than a third of respondents said a simultaneous “Release to One, Release to All” policy would dissuade them at some level from filing a FOIA lawsuit; a fifth of the respondents stated that it would be a moderate or severe disincentive. Again, a delay period is a possible means of reducing these concerns.

III. Survey Process

On August 2, 2016 the Reporters Committee launched an online survey targeting journalists’ views on the “Release to One, Release to All” policy. The survey was publicized through social media, email listservs, and individual outreach efforts. It consisted of both multiple choice and write-in answers, affording respondents the opportunity to elaborate on their answers and provide additional comments and insight.⁸ It remained open for two weeks.

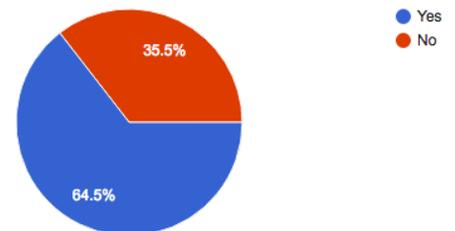
A total of 119 responses were received. Twelve respondents that did not self-identify as currently working in a journalism capacity were removed from the response group before the data was analyzed. While efforts were made to obtain as many voluntary responses to the survey as possible, and to maximize the accuracy of the data reflected in this report, the Reporters Committee’s survey was not conducted using a random sample of journalists, and it reflects only information that was voluntarily provided to the Reporters Committee on an anonymous basis in response to the survey. The Reporters Committee does not represent that the results of its survey accurately reflect the views of all journalists concerning “Release to One, Release to All.”

IV. Characteristics of survey respondents

The overwhelming majority of the survey respondents (93.5%) use FOIA in their journalism work, or oversee staff who do.

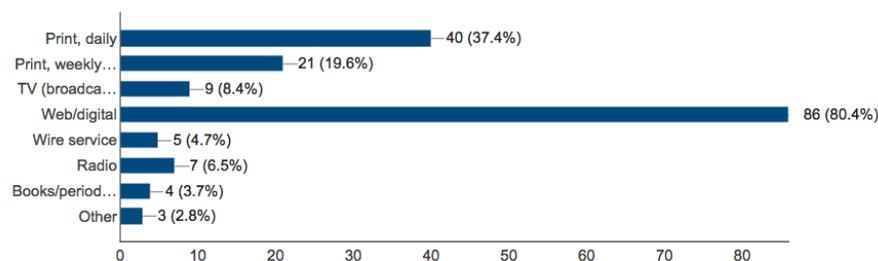
Almost two-thirds (64.5%) of the respondents self-identified as “investigative reporters,” which indicates they are more likely to be involved in long-term journalism projects that could be impacted by a “Release to One, Release to All” policy.

Are you an investigative reporter? (107 responses)



The survey also asked the respondents to identify how their work is primarily published. The

How is your work primarily published? (check all that apply): (107 responses)



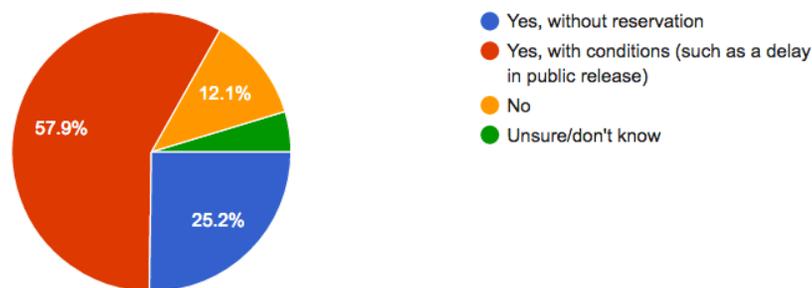
⁸ Some of the written responses to the survey questions that appear in this report have been edited for grammar, spelling, and/or length.

vast majority of the respondents (80.4%) stated that their work was published online or in a digital format. Slightly more than a third (37.4%) had their work published in a daily print format; around a fifth (19.6%) in weekly or monthly print publications; smaller numbers work for TV, radio, wire services, and others.

V. Journalists’ general support for “Release to One, Release to All”

Overall support for the “Release to One, Release to All” policy among respondent journalists was high. Of those who took the survey, 83.1% supported the release of records to all in one way or another, 12.1% did not support the policy, and 4.7% were unsure or didn’t know. It should be noted that a substantial majority of respondents (57.9%) supported the policy only with conditions, such as a delay in the public release of documents. Only a quarter supported it without reservation. The support for the policy with a delay and the length of delay is explored in more detail in Section VII below.

Do you support a "Release to One, Release to All" policy? (107 responses)



Among those who self-identified as investigative journalists (69 respondents), disapproval of a “Release to One, Release to All” policy was slightly higher (14.5%), and unconditional support was slightly lower (18.8%) than among journalists who did not characterize their work as investigative. However, overall support, including those who favor the policy with a delay, was high among investigative journalists (79.7%).

Of the 24 respondents who indicated that their work, at least in part, is published on a longer time-frame (weekly, monthly, books, or periodic studies), disapproval of the policy remained largely the same (13%), unconditional support rose (26.1%), and overall support remained high (78.3%).

VI. Journalists’ perceived effect of “Release to One, Release to All” on their reporting

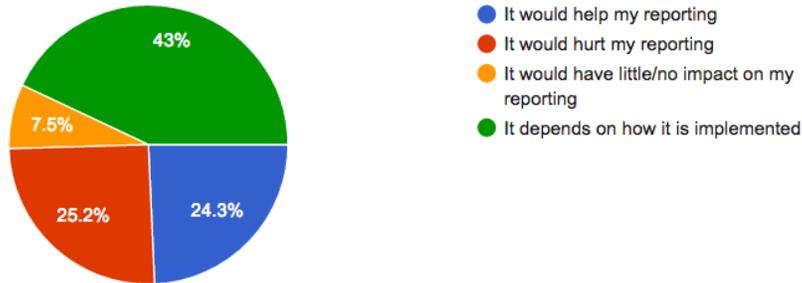
A. Negative effects of “Release to One, Release to All”

Some journalists have expressed concerns that if the government publicly releases records they have requested through FOIA without a delay (or too short a delay), other reporters or news

organizations may be able to “scoop” their stories.⁹ This concern was pervasive throughout the responses to the Reporters Committee’s survey.

Thinking about your reporting, how would a "Release to One, Release to All" policy affect your work?

(107 responses)



For example, some respondents stated:

- “ I think my editors and I would be less interested in investing the time for FOIA requests and responses, etc. if the resulting release of documents would be shared simultaneously with others. Scoops still matter!”
- “ Clearly, news organizations sustain themselves by providing exclusive information to readers. Otherwise, what we’re providing is a commodity. Half of reporting is knowing what to ask for; public records are the same way. It’s not fair—or at least, not ideal—for one organization to have to invest so heavily in the asking, and the reporting it took to get to that asking, and then have to share equally in the receipt of the news from that ask.”
- “ I’m able to convince editors to expend time and resources on stories like these because I’m able to bring back scoops. Having my scoops go to everyone who hasn’t spent the resources and time on the story could really harm our ability to do stories like this. It’s also a matter of journalistic fairness. I might get a FOIA response and then spend months investigating the subject of that FOIA so I can tell a complete story. But others might not do that. And then both the journalistic outlet and the subject of that FOIA are harmed as a result.”
- “ Taking the time and effort to identify valuable public records, negotiate for their release (often at great time and some expense) and in some cases paying applicable fees, only to have them dumped out to the world immediately would discourage records-based and dataset-based investigative reporting.”
- “ There is so very little ‘glory’ left in journalism, and people certainly aren’t doing it for the money, so it seems counter-productive to remove one of the few remaining

⁹ See, e.g., Benjamin Mullin, *The government is now giving away your FOIA scoops*, Poynter (Jul. 10, 2015), <http://www.poynter.org/2015/the-government-is-now-giving-away-your-foia-scoops/356961/>

incentives for a journalist to do some actual digging – which is the thrill of having a scoop.”

Many of the concerns associated with “Release to One, Release to All” involved longer-term investigative reporting. Reporters worried that the quality of the journalism based on records obtained through FOIA could be negatively affected by the desire to get something out before others, even if the public would benefit from more research:

- “ Releasing formerly hidden documents to everyone would force reporters to pull together stories more quickly — hastily — in an effort to retain their advantage on the story and could easily lead to stories published without critical information or fully vetting both sides of an issue, or worse yet, with incorrect information.”
- “ It increases the deadline pressure to file a publishable article after receipt of FOIA information. And when it can take months to obtain the information that may be of substantial complexity, pressure to file within hours or days may not serve the interests of the story or the readers.”
- “ Release to one release to all with no delay would enable reporters who might not have a full grasp on a topic to snatch documents upon release and put out a cheap and dirty version of a story that relies more on documents than on fully developed themes that frame a story in its proper context.

But other respondents pointed out that access to government records released to a reporter alone is not usually enough to scoop them on a story. For most projects, FOIA records are just one source of information. While there are some “smoking gun” documents that form the basis of the entire story, that is usually not the case:

- “ The idea that it would give away scoops is only valid if the investigative reporting doesn’t involve any additional research beyond the release of the documents. Without knowing about and following the investigation in advance or being aware that there’s a release pending, there’s very little chance for another journalist or organization to scoop a story.”
- “ [I]f we’ve made a FOIA request . . . we are advanced in our reporting work on the subject and the material produced by the FOIA request helps complete that reporting. Our work is likely to be far ahead in breadth, depth and context than competing news organizations who might try to jump on it.”
- “ Sometimes material is released which is (or even merely ‘which contains’) information that is a vital piece of a research jigsaw. These releases aren’t going to spoil a story that I’m working on because they are nearly always meaningless without the ‘big picture’ that I’m working on.”

Finally, some respondents noted that how the records are made public could make a difference in how a “Release to One, Release to All” policy might affect their work:

- “ There is a difference between making information available to others after it was released to one, and alerting others that the information is available. There needs to be some thought to how to accommodate news organizations that request information in the pursuit of a certain story. Announcing the pursuit could have an effect on whether that story is even pursued at all.”
- “ [P]osting online vs. press release saying info is now available - i.e., how much are they publicizing the release of the info, rather than just making it available if interested parties go searching for it[.]”

On this point, one commenter offered the following story on how their reporting was negatively affected by the simultaneous release of records to the general public at the state level, which could have analogous implications at the federal level:

- “ I requested a great number of documents about a police officer in Champaign, Illinois, who was accused of repeatedly using excessive force violations. I received hundreds of pages of documents on these incidents, videos of these incidents and his personnel file. At the same time it was sent to me, it was released in a press release and the police chief held a news conference 30 minutes later. Because of that, I was unable to take the time to properly look through the documents before posting a story online or else I knew all of the other media organizations would benefit from my work. I also did not have time to properly analyze the documents before the press conference, where otherwise I would have been able to have specific questions.”

B. Positive effects of “Release to One, Release to All”

Many journalists pointed out the benefits of having access to records requested by others under a “Release to One, Release to All” policy. Indeed, almost equal percentages of respondents stated that the policy would help their reporting (24.3%) as said it would hurt their reporting (25.2%). The reasons proffered in support of the policy include increased accessibility to federal records for those with limited resources, eliminating duplicative requests, and having experts in different subject areas analyze the same records:

- “ I mainly cover local issues and am the only reporter, which means I have a lot of stories I’m working on all at once. However, if there is a federal issue that I need to cover, it would be helpful to have the information available online, without a fee, that I could access quickly.
- “ [F]inding records that have long ago been released would allow me to avoid duplicative requests, and also learn more about what kind of records an agency keeps and in what formats, allowing me to better structure new requests.

“ In many cases, letting other journalists, experts or concerned citizens review documents provides new insights and provokes additional context. It’s hard for every investigative journalist to be an expert on all issues revolving around certain records. In one case, publishing a piece on a Department of Defense Inspector General report provokes responses from individuals who had worked for the company in question, could corroborate the issues and potentially provide new information of interest to the general public.

Several journalists expressed the opinion that government records belong to the public, and accordingly that journalists’ concerns about their release should be secondary to the benefits of public availability:

“ It's not the ‘Get a Good [S]coop act’ it’s the Freedom of Information Act. All (or almost all) records released to the public should be posted online. Would compromise for a delay (such as 1 week, one month, or quarterly posting) but feel that journalist’s ‘me first!’ concerns often go against the Act. Not what John Moss would have envisioned.”

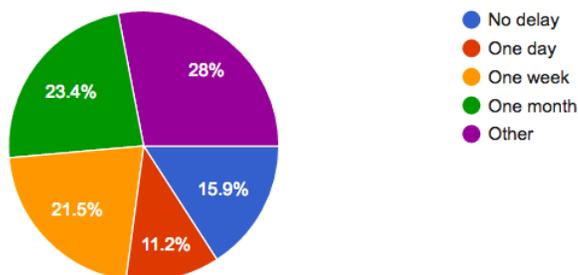
“ I also think it is hypocritical to say we want a delay in the release of records when we always fight for transparency.”

VII. Journalists’ preferences for delay between release of records to the requester and the general public

The Reporters Committee’s survey asked respondents to indicate whether they thought a delay between release of agency records to the requester and to the public was important, and if so, how long the delay should be. The question provided several delay options (one day, one week, one month), but also invited respondents to offer their own timeframe and provide additional comments and suggestions.

Some journalists argue a delay between the time records are released to the requester and when they are posted would be appropriate. Do you support a delay? If so, how long should the delay be?

(107 responses)



Respondents varied widely in their views as to how much delay was appropriate between release of documents to the requester and the general public, although overall 84.1% supported a delay of some length.

Although there was no clear consensus on a preferred length of delay, a holistic evaluation of both the multiple-choice and written responses indicates that a delay of between a week and a month would appear to be sufficient to address most of the concerns identified by responding journalists. Among those who self-identified as investigative journalists, the most common preference was for a delay of one month.

Across all respondents, the spectrum of delay preferences ranged from the very short (immediate release), to a significant delay (one year), to the more difficult to administer (after the requester's story has been published):

- “ I don't believe journalists are privileged FOIA users in terms of when information is released.”
- “ A one-day delay would still allow other news organizations to report timely, but it gives the first requesting organization time to promote its exclusive.”
- “ I think 72 hours would be sufficient for the requester to exploit his 'scoop'.”
- “ One week would not deprive the public of information. What it would do is allow the requester to analyze and report on the records to the benefit of the public and the government agencies.”
- “ 1-2 weeks is enough time for the requester to write a story if there is a straightforward story to write. If it's a story that requires digging and research then everyone should have a chance to look into it.”
- “ A month would allow for complex data analysis, time to comb through records and then time to report based upon findings.”
- “ It really depends on the FOIA. Some FOIA stories are ready to go as soon as I get the records. Others are just the start to a months-long process of getting the story.”

Some journalists suggested that the amount of delay should be proportional to the volume of records released. As one explained, “A one-page memo needs less time to report out than a 1,000-page document dump or a 10,000 record database.”

Another stated that a delay of a month would give federal agencies enough time to ensure that the records are compliant with Section 508, a provision of the Rehabilitation Act of 1973 that requires documents posted online to be accessible to those with disabilities. Compliance with Section 508 was a widely-expressed concern among agencies at the first FOIA Officers Council meeting.¹⁰

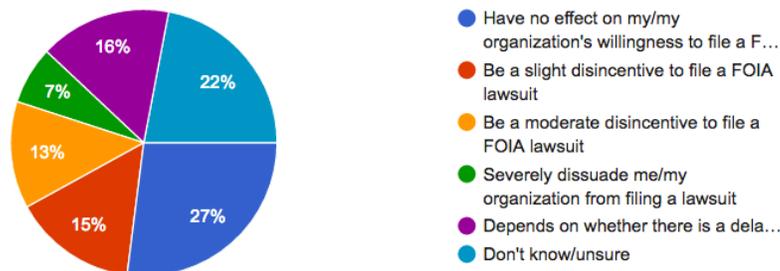
¹⁰ <https://www.justice.gov/oip/blog/cfo-council-holds-first-meeting-white-house>

VIII. Journalists’ perceived effects of “Release to One, Release to All” on FOIA litigation

The Reporters Committee survey also asked respondents whether the simultaneous public release of records would have any bearing on their willingness to file a FOIA lawsuit.

Some have expressed concerns that a "Release to One, Release to All" policy would reduce the incentives for filing a FOIA lawsuit. Would the simultaneous public release of records obtained through a lawsuit:

(100 responses)



Overall, more than a third of respondents (35%) said a simultaneous “Release to One, Release to All” policy would dissuade them at some level from filing a FOIA lawsuit; a fifth of the respondents stated that it would be a moderate or severe disincentive to initiate litigation. Slightly more than a quarter (27%) of the respondents stated that it would have no effect on their willingness to file a FOIA lawsuit, while around a fifth (22%) said they did not know or were unsure.

In written comments, many journalists reiterated that they believe there should be a delay between the release of records to the requester-plaintiff and the public. The higher costs (both monetary and effort) associated with bringing a lawsuit were mentioned several times as one of the reasons why a delay is more important when it comes to records released only as a result of litigation:

- “ Now the investment to obtain that information is even higher – we’re paying lawyers to get it.”
- “ There is absolutely no incentive in investing money in a FOIA lawsuit if it means that our news organization would not be able to have the opportunity to report on the records first.”
- “ I have filed two FOIA lawsuits during my career, and am on the brink of filing several more. As a freelancer, I cannot compete with the Times or the AP when it comes to the speed of an investigation. Were they to monitor FOIA documents released via the court system . . . they would be able to have a jump on any independent investigators who filed the suits. This would have a seriously chilling effect on independent investigators from filing a suit[.]”

- “ [W]e support release to all, but with a delay. We would likely not engage in costly litigation if materials were subject to simultaneous release.”
- “ The burden of filing lawsuits is already heavily against the journalists, many of us don't have resources to pay for lawyers. If some other organization can piggyback the on my lawsuit ...why would I pay for it?”
- “ Litigation is expensive, time consuming, and energy draining. To have the incentive to do that, I need to also gain the benefit of the results.”
- “ Lawsuits are risky, expensive, and requires a backbone not always available among management in news organizations. If lawsuit records are released immediately to all, an already reluctant Fourth Estate gatekeeper can have another reason not to file: Why should we fight this battle just so the government (if ruled against) can find some satisfaction in immediately giving the records we put blood, sweat and tears into obtaining to our competition?”

Several respondents offered real-world examples of how “Release to One, Release to All” might affect their reporting:

- “ I am having an article published in a monthly magazine based upon several FOIAs I filed – and a FOIA lawsuit. . . . The lawsuit was filed mid-2015. The first release of FOIA documents was Fall 2015. The article is coming out in October, 2016. The delay between document release and publication is an unavoidable consequence of the lengthy research and reporting process to put those documents in context, as well as the length of the news cycle (and scarcity of space for a feature article) of a monthly magazine. Were the documents released immediately to the public (or even after a short delay), it would have put me at a significant competitive disadvantage to anyone else who simply monitored the outflux of FOIA documents from the federal agency I was looking at. If I am to benefit from my own FOIA – my own lawsuit, even – without another outlet short-circuiting my reporting and writing, it can require a delay of many months before general release.”
- “ We are currently suing under FOIA for a large data set. It has been a multi-year effort and very expensive. It’s unlikely we would have pursued litigation had the data just been released to everyone. So in cases like this (and others), simultaneous release to all would actually discourage aggressive efforts to win information and thus undermine transparency.”
- “ We are working on behalf of the public, so it would be hypocritical to not support releasing documents to everyone. However, we also bear the brunt of public records battles and should be rewarded for that by having first access to the records. That is why I support a delayed public release policy. I was once part of a team engaged in a California Public Records Act battle. The court sided with us, and hundreds of pages of documents were to be released. But the state also said they’d be sending the records at the same time to others who’d filed records requests for the same files after they saw that we did. (I know this is different than a release-

to-all policy, but it had the same effect). We got the records Friday. I spent the next 48 straight hours combing through them and rushing a story in order to be the first to report on records that my organization had spent years litigating for. If I'd even gotten just a couple of week days' head start, we could have done a much better story. I also imagine that if my organization knew the files would be released to everyone, they might have held back and waited for someone else to step up and litigate the case. What would happen if we all did that?"

Others were not dissuaded by the idea of simultaneous release, and even noted how it could result in public benefits. One journalist noted that Hillary Clinton's emails are currently being released to the general public as the result of a FOIA lawsuit brought by Jason Leopold, which has enormous benefits. This sentiment is similar to others who felt that FOIA lawsuits are more about providing a public benefit and clarifying the law, rather than securing a competitive advantage.

IX. Additional considerations

One respondent expressed concerns that implementing a "Release to One, Release to All" policy would have the effect of decreasing discretionary disclosures under FOIA. That respondent, a journalist who routinely asks for information that is in the public interest that includes personally identifiable information, stated the view that if government officials were required to also post such information online they would be much less willing to release it. In other words, "Release to One, Release to All" might "reduce[]FOIA to the least common denominator, and only required releases."

X. Conclusion

The results of this survey are being published to provide additional information to policy makers and the public as the "Release to One, Release to All" program is implemented. As the analysis above indicates, most of the respondent journalists approve and welcome such a policy as long as there is a delay between release of records to the FOIA requester and the general public.

For those that want to conduct their own analyses or see individual responses to the survey, a CSV is available to download at <http://rcfp.org/x?Rwdg>.

For more information, please contact the Reporters Committee for Freedom of the Press.