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To fee or not to fee: Requester attitudes toward freedom of information charges

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ABSTRACT

This study seeks to establish a foundation for how FOI fees are received by public record requesters, and how fees influence behavior across demographics and requester types. A survey of 330 public records requesters in the United States revealed sharp disparities in how requesters perceive fees. Private citizens, journalists, academics, and nonprofit requesters were more likely to identify excessive fees as a serious impediment, whereas commercial requesters and lawyers did not. The study also found differences in how fees are experienced at the federal, state, and local levels. Findings suggest that fees are particularly problematic for certain requester types, notably average citizens and those seeking records in the public interest, and that fees may therefore obstruct the public's ability to become informed and better self-govern. Based on democratic theory, this U.S.-based study provides caution and insights for governments throughout the world against imposing barriers that might obstruct civic participation.

1. Introduction

Governments throughout the world often charge citizens fees for the search, review, and duplication of public records, sometimes resulting in claims that agencies are blocking access to information vital to a functioning democracy. Little research has examined the impact fees have on different kinds of records users, and whether the financial barriers dissuade people from seeking to know what their government is up to. This study attempts to fill that gap by surveying 330 requesters in the United States about their experiences and perceptions regarding public records fees, and whether fees dissuade public-interest requesters from acquiring public records and engaging in democratic self-governance.

Since its beginning, the U.S. government has produced huge quantities of information for public consumption at no cost to the recipient. Dating back to the 19th century when the United States established the Government Printing Office, the Congressional Record, and the Federal Depository Library Program, the government has been dedicated to publishing and distributing information. To this day, many U.S. offices and agencies' primary purpose is producing and disseminating information, particularly digitally (e.g., the Bureau of Labor Statistics and the National Weather Service).

The notion of access to government information as a transaction that

requires reimbursement did not fully exist until the passage in the United States of freedom of information (FOI) laws, which established a requirement of public offices to provide individuals access to existing government records. The earliest FOI laws promised individuals the right to inspect, examine, or review records and rarely contained any mention of costs or expenses. Presently, fees are an established element of FOI laws in most jurisdictions, but the digital era may be driving a reassessment of the role of fees in requester-release systems. These technologies have dramatically changed FOI's central mechanism, shifting from mailing hard copies to online transfer of PDF or data files. And recently, countries have begun reconsidering fees. A recent trend among Canadian FOI laws requires a nonrefundable application fee—up to \$25 in some provinces—to file a request, which does not preclude further fees.

Despite the promises of digital technology and proactive dissemination of information, growing frustration with public records fees is reported widely in the U.S. media (Bayless, 2019; Lipton et al., 2022; Wilks & Benson, 2021). In Michigan, a parent was issued an invoice of more than \$18 million for records pertaining to a local school district's monitoring of social media (Cunningham, 2022). A nonprofit sought records on a Florida sheriff's office's use of predictive policing software and was provided a \$1.2 million fee estimate (Maass et al., 2022). In

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Maryland, a nonprofit dedicated to examining the criminal justice system was denied a fee waiver and then given a \$245,000 fee estimate for records related to investigations of officer misconduct (Mettle, 2022).

So why does this matter? If fees dissuade public-interest requesters, such as citizens and journalists, from acquiring records, then under democratic theory, informed self-governance is threatened, not to mention practical benefits to society. Previous research indicates that for every U.S. dollar spent on records-based investigative reporting, society benefits \$287 (Hamilton, 2016). Public-interest requests may improve financial management of government (Cucciniello, Porumbescu, & Grimmelikhuijsen, 2017; Gao, Lee, & Murphy, 2018) and produce public health benefits (Benear & Olmstead, 2008). Requests by average citizens most often aid their communities, according to an analysis of one million citizen public record requests in Mexico (Berliner, Bagozzi, & Palmer-Rubin, 2018).

This study seeks to explore attitudes toward FOI fees via a survey of 330 public records requesters in the United States. The survey asked requesters about their experiences, opinions, and perceptions of FOI laws and included a series of questions about fee experiences as well as how the respondent would react to changes in FOI fee practices (e.g., removal of all fees, instituting an irrevocable flat fee). The results of the survey add meaningful detail to literature on FOI fees, which to date has largely been limited to observing the theoretical burden fees impose. The present study extends that discussion by focusing on requesters' perceptions and experiences with fees and documents significant relationships between requester type (i.e., journalist, commercial, academic, etc.), along with the level of government (i.e., local, state, or federal), and perception of fees as a problem or impediment, among other results. The manuscript is organized as follows. The first section explains the history and current landscape of public records fees in the United States. The second section provides a history of FOI fees along with an overview of the present state of fees in the United States. The third section explores the relevant literature and democratic theory of FOI laws. The fourth section lays out the methods, and the fifth section provides the results. The sixth section concludes the manuscript by discussing the findings and implications of the results.

2. FOI Fees: past and present

2.1. History of FOI fees in the United States

From the beginning of the nation, the United States' founders noted the need for people to be provided government information in an accessible manner. In 1776, the Declaration of Independence noted the English King's tactics in keeping people from their records, stating, "He (the King) has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures." As a result of this frustration, Thomas Jefferson argued that citizens must be physically near their public records (Quinn, 2003). In 1789, following ratification of the Constitution, Congress passed the Housekeeping Act to mandate that its records be provided to the public for free (First Congress, 1789). Creation of the Federal Depository Library Program in 1813 solidified the notion that it is the responsibility of the government to publish and distribute to all corners of the country a free record of its business.

A legal dispute dating to 1856 details an early instance where a U.S. government entity was forced to consider the expenses of public access to government information (De La Mora, 1983). A county clerk in Wisconsin sought reimbursement from the county for the wood and candles he used to heat and light the room where locals viewed government documents. The Wisconsin Supreme Court decided the county would reimburse the clerk because access to government information should be easy and comfortable to the average person.

Nearly a century later, Cross (1953) analysis of public records laws in the United States found an inconsistent approach to fees among states

prior to enactment of the Freedom of Information Act (FOIA). He found that early FOI-adjacent common law in the U.S. states, without exception, referred to a right of inspection or examination, giving no cause to even consider costs or expenses incurred by the government. Cross documented an outlier 1891 case in Virginia where a citizen sought a copy of the local voter registry. The case pivoted on whether the law provided merely inspection or the right to leave with a copy, and the judge found that so long as the citizen covered the cost of producing a written copy, it was the individual's right. During this early period, the prevailing legal position was inspection included copying (and extracts or memoranda) with little to no consideration of government expense or reimbursement (Cross, pp. 34–35). Cross also examined a right to photograph public records, concluding, "It seems likely that the right to photograph will be allowed where the right to inspect exists" (p. 35), again with no consideration or mention of costs.

By the mid-20th century, however, copies and copy fees became commonplace in state FOI laws. In his book, Cross had found 17 states with statutes mentioning a right to copy or receive a certified copy, and all but five included an express provision requiring payment of a fee. It bears noting that copies in this era typically meant a certified copy or a reproduction of the original, often a labor-intensive effort. Fees for copies proliferated as states formalized FOI laws, and a fee provision would be codified in the 1966 federal FOIA, firmly entrenching the fee as an element of the modern FOI process.

The pre-FOIA history demonstrates access to government in the United States was initially uninterested in fees or recouping expenses. Laws were focused on ensuring physical in-person access to government documents. Fees arrived as a method for recouping costs for physically reproducing copies of records. Photocopier machines buzzed to life in the 1950s, and while they dramatically simplified the reproduction process, they were high technology at the time and costly to purchase and maintain. As government offices slowly converted from tedious manual reproductions to the faster but technologically involved photocopier machines, different kinds of expenses continued to be passed along to the requester, rationalized in Congress and state legislatures throughout the country.

2.2. Congressional rationale for fees

Over the relatively modern life of the federal FOIA, the U.S. Congress has emphasized different rationales for fees. The original federal FOIA statute merely established a right to charge requester fees, offering no parameters or motivations. The FOIA statute was a concise document, just two pages, and presented a rather bare outline of the law as it is currently understood. Its only mention of fees was to acknowledge they were an element of the mechanism. The details were left to be determined.

The legislative history of the FOIA demonstrates fees were a tertiary concern of the original drafters of the law. Attorney General Ramsey Clark (1967) provided thorough guidance that colored in much of the outline Congress had agreed to. Clark was especially focused on FOIA operating under a user charges model, a governing policy that relies not on government subsidy (often via taxes) to support a public service but instead requires those that directly benefit from the service to financially support it. The purpose of the fees, per Clark, was to help establish FOIA as a self-sustaining mechanism.

User charges has remained a fundamental rationale for the continued use of fees, and presidents and Congress have frequently returned to the rationale for justifying fees and making changes to the fee structure. However, just as long fees have existed, there has been concern about abuse of fees. In response to President Ford's veto of the 1974 FOIA amendments, Senator Gary Hart said Congress would gladly consider appropriations, additional staff, and a bill that would give agencies more discretion in assessing fees (Senate action and Vote on Presidential Veto: Hearing before the U.S., 1974, p. 453). Hart's contemporary, Senator Ted Kennedy disagreed, saying that abuses of fees were well documented

and too often acted as “toll gates on public access” (p. 439). Kennedy scoffed at the idea there was excessive expense in administering the FOIA. He said there was no proof whatsoever, “In fact, the evidence points in just the opposite direction—that agencies have been overcharging and using fees to block release of public records” (p. 439). Kennedy concluded, “[F]reedom of information should not be for sale only to the highest bidder” (p. 439).

A tension arose with the 1974 FOIA amendments. The Pentagon Papers and Watergate spurred renewed interest in government transparency, and one beneficiary was the FOIA, which was at the time a largely toothless administrative law. The changes to the FOIA were intended to give journalists and citizens a sharper tool to ensure accountable governance. One such change was instructions to agencies to consider waiver or reduction of fees if the request was deemed to benefit the public interest. In the lead-up to the pivotal 1974 amendments, the House produced a report that contained a candid survey of FOIA administration conducted by the Committee on Government Operations (H.R. Rep, 1972). Abuse of fees was cited as a major problem area, finding that excessive charges had become a deterrent to requesters. The report proposed a number of solutions, including the possibility of a minimum fee, to be waived when the request is in the public interest.

After the 1974 amendments, future Supreme Court Justice Antonin Scalia wrote a 1982 screed, castigating Congress for passing legislation that would not allow agencies to bill the requester for the full amount of costs incurred and abandoning the user charges model. He lamented the extravagance of providing citizens access to government records, holding particular scorn for the failure to conduct meaningful cost-benefit analysis (Scalia, 1982, p. 16).

The 1986 FOIA amendments introduced a new fee structure that considered the type of requester in determining fees to be assessed. Requests made for commercial purposes would be expected to pay the heftiest fee, and requests made for journalistic or scientific purposes would pay the least. President Ronald Reagan provided substantive comment on the 1986 FOIA amendments, calling new requester fee categories a step forward in being “able to charge and recover the full costs of processing requests” (Reagan, 1986).

A 1991 bill introduced by Senator Patrick Leahy proved unsuccessful but influential. The bill proposed a percentage of collected FOIA fees be distributed among agencies found to be successfully implementing the FOIA. The bill also proposed payments to requesters for out-of-pocket expenses when agencies miss deadlines. This idea would find traction in the 2007 OPEN Government Act (also sponsored by Leahy).

2.3. Present status of FOI fees in the United States

Federal FOIA fee practices currently break along two axes: the type or category of the individual making the request and the types of work by agency staff in fulfilling the request. The category of the requester is determined by the intended use or purpose of the sought records. The statute identifies three types of work subject to fees in processing a request: 1) search, 2) review, and 3) duplication. Search includes the efforts made by agency staff to discover the sought records. This can be as simple as a keyword search of a database or as onerous as locating a single piece of paper in a large off-site physical storage facility. Review is primarily concerned with determining what is releasable and what is exempt from release and should be redacted. And duplication is the reproduction of responsive records, ranging from a paper copy of a record to machine-readable digital files to video and audio files.

The statute also defines three types of requesters: 1) commercial use; 2) news media, educational, or noncommercial scientific use; and 3) other. Each of these categories is subject to different fees associated with the three different processing tasks. Commercial use requesters are assessed fees for all three processing tasks: search, review, and duplication. Requesters categorized as news media, educational, or noncommercial use are only assessed fees for duplication. Requesters in

the miscellaneous other category are assessed fees for search and duplication. All requesters, save those in the commercial use category, are provided the first two hours of search and the first 100-pages of duplication at no cost to the requester. The statute also establishes fee waivers or reductions if disclosure is determined to be in the public interest. The 2007 OPEN Government Act set on improving response times, and restricted agencies from assessing fees when the agencies fail to meet statutory processing deadlines.

State FOI laws largely mirror the structure and objectives of the federal U.S. FOIA, though most state FOI laws are much lighter on details than the federal law. Review of state fees provisions makes clear that there is little consistency or consensus on best practices regarding how fees are conceived and applied. Most fees provisions were also written in a time of hard copies and remain unamended and as a result are predominately concerned with duplication fees and provide one of three approaches: 1) an explicit fee schedule (e.g., 25 cents per copy), 2) ambiguous fee requirements (e.g., “reasonable fees” or “actual costs”), or 3) no clear statutory guidance regarding fees.

Some state fee provisions offer a view of different, often novel, approaches to collecting fees. Some states, like Wyoming, Indiana, and Hawaii, grant fee-setting responsibilities to a state office or authority, which allows for flexibility and potentially more responsiveness to the climate than a fixed statute. Oklahoma explicitly prohibits the use of fees as a deterrent to requesters or as an obstacle to release of information. In Florida, the attorney general produced a memorandum strictly forbidding the use of FOI as a revenue-generating operation. In Iowa, attorney general guidance requires that fees be uniformly applied to all who request records, expressly prohibiting separating commercial requests from public interest requests. Oregon’s attorney general also allowed the charging of fees even if no responsive records are located, a rarity. Fee waivers are a common subject of U.S. state FOI laws and most explicitly require requests in the public interest to trigger an elimination of any fees. Most laws lack explication on what connotes public interest and leave courts to determine this. Oklahoma, Illinois, and Ohio have provisions on how to confront what is deemed to be excessive, and Ohio limits the number of requests to 10 per month.

While less frequently discussed, a primary and enduring purpose of FOI fees is an ability to manage requesters. States have tried different methods for reining in voluminous or vexatious requests, primarily through defining the terms for excessive requesting. Federally, some courts have considered this, but by and large, prolific requesting is implicitly managed through fees. When a requester seeks five-years’ worth of emails that require close review, the agency will provide an enormous fee estimate. Commonly, this begins negotiations, and the result is something more manageable for the agency.

3. Literature review

This study is based on the normative assumptions of democracy theory that call for every citizen to enjoy the right to acquire information to foster informed self-governance and builds on a growing body of empirical research that examines whether this goal plays out in practice, seeking to answer the overall questions: Do those seeking public records for public good, not simply commercial purposes, have equal access to government information and do they feel empowered to exercise these rights?

3.1. Democratic theory

Prominent thinkers have underscored the imperative nature of transparent and accountable government. U.S. Supreme Court Justice Louis Brandeis (1913), in a call for reform of the banking industry, wrote, “Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.” Coyle (2017) observed that Brandeis was calling for access to private institutional information under a belief

that powerful social forces must be transparent. Transparency would force the banking industry into the light and allow it to be observed, scrutinized, and, importantly, subject to the powerful force of public opinion.

A contemporary of Brandeis, President Woodrow Wilson also provided an early metaphor in support of access and public deliberation. [Wilson \(1913\)](#) wrote, “Government ought to be all outside and no inside ... Everybody knows that corruption thrives in secret places, and avoids public places, and we believe it a fair presumption that secrecy means impropriety” (p. 114). He acknowledged that this would be inconvenient for a great many government officials but suggested the public had been subject to the whims of powerful people for too long.

First Amendment theorists have frequently made connections between expression, access, and a functioning democracy. Alexander Meiklejohn suggested the very heart of social order relies on a constant flow of knowledgeable individuals expressing and voting their own will. Collective self-rule could only be legitimate if public consent to be governed was informed. Blindly voting or participating in civic discourse without knowledge was hollow. [Meiklejohn \(1948\)](#) wrote, “The welfare of the community requires that those who decide issues shall understand them. They must know what they are voting about” (p. 25).

Vincent [Blasi \(1977\)](#) concurred with Meiklejohn’s assessment that the First Amendment’s value both relies on the public being informed and derives its value from its ability to inform the public. Blasi called it the checking value in the First Amendment and believed expression’s primary function was constraining abuse of power.

3.2. Financial barriers to access

If, under democratic theory, every person should have equal access to government information to further self-governance, a growing body of research and media reports suggest fees are increasingly thwarting that goal ([Cummings, 2020](#); [Gantert, 2022](#); [Spivack, 2022](#); [Zeman, 2022](#)). Legal analysis of fee provisions in U.S. public record laws indicate wide variance and confusion ([Lee, 2016](#)). In addition to the chronic nature of excessive fees, [Feinberg \(1986\)](#) and [Jones \(2015\)](#) have documented the use of fees as a deliberate tactic to deter requesters. Congress has repeatedly expressed concern over the use of fees as impediments, beginning shortly after the 1966 enactment of the FOIA ([H.R. Rep, 1972](#); [Senate action and Vote on Presidential Veto: Hearing before the U.S., 1974](#)).

[Giannella \(1971\)](#) examined the inconsistencies in the original FOIA, and he was especially concerned with the lack of uniformity in fees, calling discretion an opportunity for inequality. He wrote, “Unreasonably high fees can operate as obstacles that tend to accentuate sharply the advantage enjoyed by those with an abundance of economic resources” (p. 225). Giannella honed his observation, noting interviews with government officials found the FOIA “operates tolerably well since sustained efforts to obtain non-exempt records will usually be rewarded... However, the absence of persistence may reflect a lack of sophistication and money, not a want of interest” (p. 225). Those that win court cases, he found, were typically organizations with significant resources or parties with a strong financial interest in the records.

[O’Hanlon \(1984\)](#) would come to many of the same conclusions more than a decade later. There was inconsistency and capriciousness in fee designations, and this resulted in the law favoring corporations and law firms. Fifty years later, [Hamrick \(2021\)](#) found Giannella’s concerns over fees creating disparities to still be material in at least one U.S. state. Florida is one of the few states whose constitution guarantees a public right of access to government records, yet Hamrick’s research found the state’s FOI fees system to favor some requesters while leaving others disadvantaged and often responsible for expensive fee estimates.

In surveying and interviewing hundreds of FOI experts, [Cuillier \(2017\)](#) found search and redaction fees and copy fees to be the fourth and fifth biggest roadblocks (of eight options) in the FOI process for

requesters, following delays, excessive redaction, and ignored requests. [Ingrams, Kaufmann, and Jacobs \(2023\)](#) conducted an online experiment with 925 people to demonstrate that charges as low as \$15 can influence how willing people are to submit requests, as well as their satisfaction with the FOI process – higher costs result in fewer submissions.

[Pall \(2009\)](#) called the federal position on FOIA fees outdated and “a barrier to access without any corresponding benefit for the government” (p. 628). He suggested the issuing and collecting of fees was resource-intensive while serving the interests of neither party. He called for the adoption of a flat fee system, not unlike the Canadian federal application fee, but without the possibility of additional charges. Had the U.S. cabinet-level departments applied Pall’s formula in 2021, five of 15 would have collected more in fees, and in total the departments would have collected nearly three-times as much in fees. Pall presented evidence suggesting flat fees to be a viable solution for the government while simplifying the process for requesters.

[Roberts \(2000\)](#) was wary of “enterprising government,” where bureaucrats like Hatch enthuse about the potential amount to be made in collecting fees. He found the Canadian government had reframed FOI as a commodity, packaging and selling government-held information rather than providing it for free or at-cost as a public service intent on keeping citizens informed. He recounted the actions of the Ontario government, where they drove up fees for requests, resulting in 30% fewer requests and 40% fewer appeals. A recent study of British Columbia’s 2021 introduction of a \$10 flat fee found the new fee to have reduced requests from the media by 80% ([Office of the Information and Privacy Commissioner for British Columbia, 2023](#)).

Additionally, scholars have explored how contemporary fee practices influence the functions of FOI laws and internal government processes. [Wagner \(2017\)](#) underscored the hypocrisy of the federal governments’ three branches consistently identifying transparency and FOIA as democratic imperatives while chronically underfunding FOIA. He found fees collected account for about 3% of FOIA expenses over the first four decades of FOIA. During that same period, FOIA costs accounted for 0.01% of these department’s operating budget.

In a study of access professionals, [Kimball \(2012\)](#) found lack of clarity in fees to be one of the two most troublesome elements in applying the law, according to those that process requests. [Cox and Haber \(2020\)](#) interviewed records custodians in six large U.S. cities across the country and also found there to be significant uncertainty about routine application of fee waiver provisions. In a separate study of state-level open government trainers, [Kimball \(2011\)](#) found those that train records custodians felt fees required additional time and education, making note of the subjectivity often present in applying fees. Relatedly, states with explicit fee schedules in their statute were found by [Wagner \(2021\)](#) to have a strong relationship with better FOI outcomes and processes.

Scholars also have studied the internal pressures of government agencies to charge fees and manage resources, and the potential benefits of proactive transparency ([Johnson, 2020](#)). [Hazell \(1989\)](#) examined requesters in Canada and Australia, noting that fees represent a fraction of the cost of producing records while the burden on staff time continued to increase. A number of e-government scholars have examined the pros and cons of providing government information digitally online for free, generally finding positive evaluations of government and the process ([Meijer, 2007](#); [Musafir & Freitas, 2015](#)). Yet, free proactive dissemination of government information is still a work in progress ([Misuraca & Viscusi, 2014](#); [Waller, Irani, Lee, & Weerakkody, 2014](#)).

Based on the previous empirical research, and in line with democratic theory, this study seeks to discover whether public records requesters find fees an obstacle to their pursuit of information, whether those seeking records for public-interest purposes are more likely to feel shut out of the process, and whether fees are perceived to alter requesters’ behavior. The study seeks to evaluate one main hypothesis and three research questions:

H1. Requesters will view excessive fees as a problem, and this concern will be greater among those requesting records for a public purpose compared to commercial requesters.

RQ1. Do fees alter the use of FOI laws and requester behavior?

RQ2. Do requesters support application of a flat fee?

RQ3. Were fees eliminated, would requesters increase their requesting habits?

4. Method

To address the hypothesis and research questions, this study employed a survey of 330 FOI requesters in the United States, conducted in three waves, utilizing different recruitment methods to improve external validity with a mix of requester types.

4.1. Three samples

The first sample was drawn in fall 2021 from MuckRock, a U.S. FOI request processing nonprofit organization that has submitted more than 120,000 public record requests in the United States—at all levels of government—on behalf of requesters since 2010. MuckRock provided the email addresses of 707 individuals who had both submitted a FOI request using the service and who had signed up to receive the MuckRock newsletter and other emails. According to MuckRock, about a third of its users are journalists, and average citizens comprise the bulk of the rest—both critical for inclusion given the study’s focus on whether fees detrimentally affect people seeking records for engaging in democratic self-governance. The sample included requester contact information for individuals who had used the service dating back to 2010 until present. Emails were sent to the 707 individuals on October 25, 2021, and three follow-up emails encouraged participation. The survey closed on November 19, 2021. A small incentive (a \$5 Amazon gift card code) was offered to all who received the email, and the instructions encouraged them to redeem the incentive whether they completed the survey or not. The effort produced 113 completed surveys. The completion rate was 16.0%, while the incentive redemption rate was 8.6%.

The second phase, intended to expand the diversity of requesters, was a broad-based recruitment strategy using listservs and social media outreach. On November 29, 2021, the survey was sent to several listservs, including those affiliated with the American Bar Association, Investigative Reporters & Editors, National Freedom of Information Coalition, Free Expression Legal Network, and the Media Law Resource Center. The survey was also distributed through Twitter and LinkedIn. The survey remained live until December 17, 2021. There was no incentive offered for this stage of sampling. The broad recruitment totaled another 109 completed surveys. A convenience sample does not allow for a calculation of a response rate, since the survey was distributed through listservs, and at times forwarded to individuals off the listservs, so the overall potential population surveyed is unknown. Use of samples through association membership lists and email listservs can be useful for preliminary studies (Dahmen & Walth, 2021; Krumsvik, 2014; Molyneux & Zamith, 2022).

The third wave, intended to pull from a representative population of actual public records requesters, used a controlled stratified random selection of requesters from real FOI logs from local, state, and federal agencies across the United States. For local agencies, the Census Bureau’s 2017 Census of Governments was used to randomly select 50 municipalities/townships and 50 counties. Public records requests were submitted to each of the 100 local agencies seeking a FOI log for May 1, 2020, to December 31, 2020. Logs were obtained from 24 of the local agencies (76 did not respond or provide the logs). For each request, a log with the following categories was sought: date of request, requester name, requester contact info, requester category, result of the request, among other fields.

For state-level requesters, a records request for a FOI log from August 1, 2020, to October 31, 2020, was submitted to both the primary education and transportation departments of all 50 states, for a total of 100 logs requested (63 were provided). These dates, coincidentally during the COVID pandemic, were selected because the logs would likely have been processed—with the outcomes and fees determined—and yet recent enough for requesters’ recollections to be fresh. Even though the request log dates were during the pandemic, it is believed the fee issues would remain relatively consistent.

Federal agency FOI logs for October 2020 also were sought. The study chose to focus on the 64 federal agencies that processed more than 50 requests in 2020. Logs were collected from 25 agencies that proactively posted them with the sought categories. Requests were sent to the other 39 agencies that did not proactively provide logs (or posted logs with insufficient information), and 12 agencies provided such logs, for a total of 37 federal agency logs. From the resulting 124 total acquired logs—at all levels of government—a sample of 501 requesters was randomly selected. When emails were not provided in the log, the researchers searched online and social media to find them. Each person was emailed the survey on June 10, 2022, and six follow-up prompts were sent until closure of the survey on July 20, 2022. This phase also offered the same small incentive as the first phase, and the effort produced 108 completed surveys with a response rate of 21.6%.

4.2. Survey instrument

The survey, conducted online through Qualtrics, included 53 items, and all questions focused on facets of public record requesting experiences or requester identity and motivations. Demographic questions were made optional, and throughout the survey “N/A” was made an option when appropriate. The survey’s first question provided an explanation of a public records request and asked whether the respondent had ever submitted a request, yes or no. Negative answers sent respondents to the end of the survey. No data was recorded on those who did not complete the survey. The survey was pretested by first sending to a panel of experts for review, including FOI scholars, the Federal FOIA Advisory Committee, and staff at the U.S. Office of Government Information Services.

4.2.1. Dependent variables

Severity of Problem: Seven common FOI issues were placed in a matrix, and respondents were asked “Do you believe the following issues are a problem in public records laws not meeting expectations?” with answers ranging from “Not a problem” to “Extreme problem.” One of the issues included in the matrix was “Excessive fees.”

Frequency of Problem: In a separate question, respondents were asked “How often are you charged a fee to complete a request?” Answer options ranged from “Never” to “Every time” along a five-point unipolar Likert scale. Of the 330 who answered, 74 (22%) answered “Never,” but the rest had at least some experience with fees, 11 (3%) responding “Every time,” and 43 (13%) “Most of the time.”

Discourage: An index was developed using two questions to determine whether FOI fees discourage requesters. Respondents were asked “How often has a fee estimate dissuaded you from submitting or completing a request?” and “How often has a fee estimate caused you to narrow or limit a request?” The five answer options ranged from “Never” to “Very frequently.” The responses to the two questions were summed to create the variable. The index had a high-level of internal consistency. Cronbach’s alpha was 0.861.

Flat Fees Support: Respondents were asked “Would you support a flat-fee structure (e.g., \$5 or \$35 per request) regardless of the nature of the request or the identity of the requester?” A five-point bipolar scale was provided for answer options. The poles were “strongly oppose” and “strongly support” and the middle was “neither support nor oppose.” The responses were recoded into a binary variable with those that chose somewhat support and strongly support coded as a 1, and all other

responses coded as a 0.

Increased Use: The survey then asked, “If fees were eliminated, would you be more likely to submit more requests or request more records per request than you do currently?” The five answer options were: no more likely, slightly more likely, somewhat more likely, much more likely and without a doubt. The responses were recoded into a binary variable. Those that said they slightly more likely, somewhat more likely, much more likely and without a doubt were coded a 1. Responses indicating they were not more likely to increase use were coded a 0.

4.2.2. Independent variables

Requester Category: Respondents were asked to categorize their primary requester identity from one of: commercial or business, journalist, lawyer, nonprofit organization, academic, private citizen or “average person” or other with a textbox. A dummy variable was created for each requester category.

Request Frequency: Respondents were asked a series of questions about their FOI use and behavior. The first question asked how frequently the respondent submits FOI requests, and five answer options were provided, from “I submit one request a year or less.” to “I submit multiple requests a week.”

Request Experience: Another question asked about the respondent’s amount of experience submitting to different tiers of government. Respondents were given five different answer options regarding their amount of experience submitting FOI requests to federal government, state government and local government (e.g., county or municipal).

4.2.3. Demographic variables

The survey included a series of common demographic and political questions for statistical analysis and demographic controls. Many of the survey questions were modeled on those used by the U.S. Census Bureau and lightly adapted for the survey’s purposes. All demographic questions were optional.

Age: Age was determined by asking the respondents, “How old are you?” and answers included nine age ranges.

Gender: Respondents were asked how they would describe themselves and were given four options: male, female, non-binary and an “other” option with a textbox. These responses were recategorized into a dummy male variable.

Race: A race question was asked, and respondents were told to select all that applied from the five racial categories in Census questions (White, Black or African American, American Indian or Alaska Native, Asian, Native Hawaiian or Pacific islander), along with “other” and a textbox. Race was also recategorized as a dummy variable with White as the indicator.

Income: Respondents were asked for their annual household income and given eight monetary ranges to choose from.

Education: An education question asked about the highest degree or level of school achieved. Answers options were less than a high school degree, high school degree or equivalent, bachelor’s degree, or graduate degree.

Geography: Participants were asked to include their state of residence, and then that information was used to divide responses into the 10 Census-designated regions of the U.S. (New England, Mid-Atlantic, E. N. Central, W.N. Central, S. Atlantic, E.S. Central, W.S. Central, Mountain, Pacific, and U.S. Territories).

Political Ideology: A question was posed about political beliefs with seven options available, ranging from extremely liberal to extremely conservative. In the middle was neither liberal nor conservative. An “other” option with a textbox was also available. Those who identified as extremely, somewhat or slightly liberal were recategorized into a liberal variable.

5. Results

Survey results were downloaded from Qualtrics and imported into

SPSS for analysis.

5.1. Data integrity check

Logistic regression was used for all dependent variables due to the discrete nature of the dependent variables (and concerns about normality and homoscedasticity). Logistic regression models produce pseudo R-square statistics that approximate linear regression models’ R-square. Despite limitations (Allen & Le, 2008), Nagelkerke R^2 and Cox & Snell R^2 are used as tools for estimating the strength of model relationship. The severity, frequency, and discourage dependent variables were all categorical and ordinal in nature, and ordinal logistic regression was used for these three variables. The flat fees support and increased use were binary, and binary logistic regression was used for these variables. All pretest assumptions were met, and the model fit proved to be sound.¹

The sample of requesters was skewed demographically (see Table 1). The sample showed significant deviation from U.S. Census-derived averages of gender, education, income, race, and political ideology. The study’s sample is more male, more highly educated, wealthier, more liberal, and whiter than national averages would suggest. This is not a surprise. The sample appears consistent with the limited previous research assessing demographics of requesters. Wagner (2022), in a large nationally representative survey, found males, liberals, and the more educated to be significantly more likely to have submitted a FOI request.

The three separate samples were compared to show differences in requester composition. As expected, the MuckRock sample included more journalists and citizens (75%), the listserv method fewer journalists and citizens (51%), and the request log sample was more dispersed and representative of previous research on requester type, including more commercial requesters (see, for example, analyses of requesters through federal FOIA logs by Coalition of Journalists for Open Government, 2006; Kwoka, 2016, 2021; Silver, 2016). As a result, the means of the dependent variables varied in the sample (see Table 2). Given all samples included a mix of public-interest requesters and commercial requesters, they were combined into one sample for analysis.

¹ Ordinal logistic regression was an apt fit for the severity, frequency, and discourage dependent variables. A cumulative odds ordinal logistic regression with proportional odds was run to determine the effects of a range of demographic and requester variables have on the dependent variables. For severity, the final model statistically significantly predicted the dependent variable over and above the intercept-only model, $X^2(25) = 89.560, p < .001$. The deviance goodness-of-fit test indicated that the model was a good fit to the observed data, $X^2(1450) = 943.303, p = 1.000$. For frequency, the final model statistically significantly predicted the dependent variable over and above the intercept-only model, $X^2(25) = 35.263, p = .044$. The deviance goodness-of-fit test indicated that the model was a good fit to the observed data, $X^2(1155) = 742.269, p = 1.000$. For discourage, the final model statistically significantly predicted the dependent variable over and above the intercept-only model, $X^2(25) = 64.026, p < .001$. The deviance goodness-of-fit test indicated that the model was a good fit to the observed data, $X^2(2335) = 1145.161, p = 1.000$. Binomial logistic regression was performed to determine the effects of the independent variables on the likelihood that respondents: 1) support the implementation of flat fees and 2) would increase their use of public records laws were fees eliminated. The model for support of flat fees was statistically significant, $\chi^2(25) = 47.241, p = .005$. The model explained between 20.4% (Nagelkerke R^2) and 14.8% (Cox & Snell R^2) of the variance in support and correctly classified 68.6% of cases. Sensitivity was 31.7%, specificity was 87.7%, positive predictive value was 57.1% and negative predictive value was 71.3%. The logistic regression model for greater use after elimination of fees was statistically significant, $\chi^2(25) = 60.676, p < .001$. The model explained between 25.2% (Nagelkerke R^2) and 18.5% (Cox & Snell R^2) of the variance in greater use and correctly classified 71.3% of cases. Sensitivity was 84.2%, specificity was 50.0%, positive predictive value was 73.5% and negative predictive value was 65.9%.

Table 1
Frequencies of independent variables.

	<i>n</i>	%
Gender (<i>n</i> = 321)		
Male	199	62.0
Female	110	34.3
Non-binary	12	3.7
Age (<i>n</i> = 321)		
0–34	13	4.0
35–54	149	46.4
55–74	112	34.9
75 and over	47	14.6
Ethnicity (<i>n</i> = 320)		
Hispanic origin	18	5.6
Not Hispanic	302	94.4
Race (<i>n</i> = 338)		
White	294	87.0
Black	10	3.0
American Indian	4	1.2
Asian	10	3.0
Pacific Islander	2	0.6
Other	18	5.3
Income (<i>n</i> = 312)		
Less than \$60 k	63	20.2
\$60 k - \$125 k	125	40.1
More than \$125 k	124	39.7
Education (<i>n</i> = 318)		
Less than HS degree	2	0.6
High school degree	35	11.0
Bachelor's degree	111	34.9
Graduate degree	170	53.5
Political Ideology (<i>n</i> = 314)		
Conservative	41	13.1
Liberal	189	60.2
Neither	84	26.8
Requester Category (<i>n</i> = 330)		
Private citizen	77	23.3
Commercial	26	7.9
Journalist	94	28.5
Lawyer	43	13.0
Nonprofit	40	12.1
Academic	25	7.6
Other	25	7.6
Geography (<i>n</i> = 308)		
New England	25	8.1
Mid-Atlantic	47	15.3
E.N. Central	46	14.9
W.N. Central	12	3.9
S. Atlantic	66	21.4
E.S. Central	12	3.9
W.S. Central	7	2.1
Mountain	30	9.7
Pacific	57	18.5
U.S. Terr.	6	1.9

Note: Respondents were given the option of choosing multiple race categories.

Table 2
Means of severity, frequency, and discourage by survey wave (N = 330).

	MuckRock (<i>n</i> = 113)	Listservs (<i>n</i> = 109)	FOI Logs (<i>n</i> = 108)	Total (330)
Severity	3.28	3.39	2.46	3.06
Frequency	2.23	2.17	2.36	2.25
Discourage	5.13	4.83	4.51	4.83

Note: Severity and Frequency variables measured on a scale of 1–5 with 5 indicating greatest support. Discourage variable measured on a scale of 2–10 with 10 indicating greatest support.

5.2. Hypothesis and research questions

The study's hypothesis predicted that requesters would view excessive fees as a significant problem, and that those with a public-interest purpose would find fees more of an obstacle to accessing

Table 3
Descriptive statistics for severity of FOI issue.

	<i>n</i>	<i>M</i>	<i>SD</i>	<i>Min</i>	<i>Max</i>
Unnecessary delay	330	3.96	1.273	1	5
No responsive records	330	3.25	1.477	1	5
Excessive fees	330	2.82	1.532	1	5
Third-party records	330	2.70	1.514	1	5
Glomar responses	330	2.63	1.478	1	5
File format obstacles	330	2.48	1.324	1	5
Metadata obstacles	330	2.00	1.587	1	5

records than commercial requesters. This hypothesis was supported. Excessive fees were viewed as a relatively pressing FOI issue (see Table 3). Of the seven common FOI issues, excessive fees returned the third highest mean. The mean places it between the answer options “moderate problem” and “major problem.” Descriptive results for frequency suggest requesters are assessed a fee between “sometimes” and “about half of the time.”

Requesters seeking records for a public purpose (as opposed to commercial purpose), and ostensibly of less means, find fees to be more of an obstacle (see Table 4 and Table 5). Among the strongest findings in the study, requester traits demonstrated significant positive relationships with severity of the problem, meaning certain groups found fees to be a larger problem than other groups.

Respondents who chose private citizen, journalist, academic, and nonprofit as their primary requester identity all had significant positive relationships with the severity of problem dependent variable (see Table 5). Notably, the other two requester types—commercial and lawyers—did not have significant relationships with the dependent variable.

The only other significant independent variables for the frequency variable were government-level requesting traits. Those focused on federal requests predicted a significant negative relationship with frequency of fees assessed, while state-level requesting experience predicted a significant positive relationship of encountering fees.

Research Question 1, asking if fees alter the use of FOI laws and requester behavior, found mild support—they do seem to make a difference. The mean for the discourage variable was 4.83 (on a 10-point scale), suggesting there is some, though not overwhelming, evidence that respondents limit the number of requests they submit and request fewer records per request due to fees. Regression predicted two significant relationships, both positive. Those who submit requests more frequently and those with more state requesting experience were more likely to constrain their requesting behavior due to fees.

Research Question 2, which asked if requesters support application of a flat fee, found light opposition to such a proposal. With a mean of 2.72 on a bipolar 5-point scale (2 somewhat oppose and 3 being neither support nor oppose), there is a general disapproval of the idea of all requests costing an unspecified amount. As a binary variable, 33.64% of respondents supported adoption of a flat fee. As to independent variables with relationships, only two were significant. There was a positive coefficient of a fairly large size between respondents who identified as white and support for a flat fee (see Table 6). There was a significant negative relationship between local request experience and support for a flat fee.

Research Question 3, asking if requesters would increase their requesting habits if fees were eliminated, resulted in evidence that requesting frequency would indeed increase if fees were eliminated. The mean for reaction was 2.60 (on a 5-point scale), falling between slightly more likely and somewhat more likely to increase requesting habits. As a binary variable, 61.52% of respondents said they would increase requesting activity if fees were eliminated. Notably, higher income, albeit with a rather small coefficient, had a significant negative relationship with increased use after elimination of fees. Local requesting experience had a significant positive relationship with increased use (see Table 6).

Table 4

Descriptive statistics for severity of excessive fees as an issue, frequency of excessive fees, and discourage by excessive fees by requester category.

	n	Severity	Frequency	Discourage
		M (SD)	M (SD)	M (SD)
Private citizen	77	2.91 (1.616)	2.38 (1.193)	5.05 (2.635)
Commercial	26	2.38 (1.602)	2.27 (1.079)	4.77 (2.405)
Journalist	94	3.23 (1.331)	2.26 (0.915)	5.15 (2.233)
Lawyer	43	2.44 (1.351)	2.33 (1.085)	4.23 (1.950)
Nonprofit	40	3.00 (1.569)	2.20 (1.043)	4.70 (2.221)
Academic	25	2.80 (1.581)	2.12 (1.166)	4.68 (2.641)
Other	25	1.76 (1.508)	1.96 (0.889)	4.40 (2.291)
Total	330	2.82 (1.532)	2.25 (1.050)	4.83 (2.350)

Note: Severity and Frequency variables measured on a scale of 1–5 with 5 indicating greatest support. Discourage variable measured on a scale of 2–10 with 10 indicating greatest support.

6. Discussion and implications

The study produced several remarkable findings and indicated disparities in fee opinions and behaviors. The most interesting and important finding of the study is the contrast in requester type experience. That private citizens, journalists, academics, and nonprofit requesters find excessive fees to be a more serious problem than commercial requesters and lawyers is not surprising, but it is problematic. There is a fundamental disparity in the FOI system. It takes tenacity and resources to consistently produce results, and commercial requesters have the means to pay fees, or sue if a fee estimate is determined to be exorbitant. Experienced, knowledgeable, and well-resourced requesters, such as those paid to work on behalf of corporations, push on where others give up.

As noted in the literature review, Giannella documented government officials observing this same dynamic more than 50 years ago. As well, nearly 40 years ago, O’Hanlon explicitly said the system favored commercial requesters and lawyers. It was a problem then, and, inexplicably, it continues to be a problem today. If democratic theory assumes that access to public records aids an informed electorate to better self-govern, then fees for public-interest requesters would indicate a problem in the system.

Perhaps one practical solution for government agencies is to consider looking to federal FOIA’s waivers for public-interest requesters. This is supported by the study’s finding that those requesting records at the federal level run into far fewer problems than those requesting records at the state level. Few state public record laws institute specific fee waivers for public-interest requesters. The negative relationship between federal request experience and frequency of fees bears out the precipitous decrease in fees accrued and the impact of the 2007 FOIA amendment. The stark differences between government tiers underscores the importance of scholars conceiving of these requesting tiers as distinctly different (Koningior, 2020; Peltz-Steele & Steinbuch, 2020). Perhaps commercial requesters should be expected to pay a much higher bill, as is expected at the federal level and in some states.

Another option for governments to consider is dropping the assumption that public records requests are a special service for specific users that justify user fees. In-line with the user charges rationale, the Government Finance Officers Association, recommends, as a best practice, that “when certain services provided especially benefit a particular group, then governments should consider charges and fees on the direct recipients of those that receive benefits from such services”

Table 5

Ordinal logistic regression predicting relationships with dependent fee variables.

Variable	Severity	Frequency	Discourage
	B (SE)	B (SE)	B (SE)
Age	-0.169* (0.079)	0.014 (0.083)	-0.078 (0.078)
Male	-0.085 (0.231)	0.005 (0.243)	-0.189 (0.229)
Education	-0.054 (0.180)	0.122 (0.189)	0.213 (0.178)
Income	0.065 (0.055)	0.010 (0.058)	0.036 (0.055)
White	0.733* (0.359)	0.727 (0.385)	0.655 (0.364)
Liberal	0.099 (0.232)	-0.168 (0.244)	-0.239 (0.230)
Geography			
New England	0.717 (0.461)	-0.323 (0.486)	0.126 (0.457)
Mid-Atlantic	0.067 (0.367)	0.058 (0.391)	-0.244 (0.368)
E.N. Central	-0.407 (0.384)	-0.424 (0.409)	-0.537 (0.386)
W.N. Central	0.189 (0.605)	-0.064 (0.635)	0.360 (0.595)
S. Atlantic	0.894 (0.348)	0.614 (0.363)	0.592 (0.341)
E.S. Central	-0.803 (0.613)	-0.369 (0.652)	-0.589 (0.630)
W.S. Central	0.027 (0.756)	-0.391 (0.793)	-0.779 (0.745)
Mountain	-0.392 (0.423)	0.490 (0.447)	-0.155 (0.421)
Pacific	-	-	-
U.S. Terr.	-0.186 (0.783)	-0.202 (0.841)	0.556 (0.778)
Private citizen	1.582*** (0.469)	0.738 (0.491)	0.605 (0.458)
Commercial	0.220 (0.574)	-0.130 (0.609)	-0.265 (0.571)
Journalist	1.473** (0.461)	0.431 (0.483)	0.138 (0.450)
Lawyer	0.254 (0.515)	0.165 (0.546)	-0.827 (0.516)
Nonprofit	1.200* (0.506)	0.108 (0.532)	-0.428 (0.501)
Academic	1.284* (0.594)	0.238 (0.627)	-0.056 (0.588)
Request freq.	0.046 (0.106)	0.044 (0.111)	0.225* (0.105)
Federal request exp.	0.092 (0.098)	-0.233* (0.103)	-0.049 (0.114)
State request exp.	0.304** (0.117)	0.412*** (0.125)	0.405*** (0.118)
Local request exp.	0.139 (0.107)	0.061 (0.113)	0.063 (0.106)
Nagelkerke R ²	0.261	0.131	0.198
Cox & Snell R ²	0.269	0.121	0.195

* $p < .05$, ** $p < .01$, *** $p < .001$.

Note: Pacific is the reference category for the Geography categorical variable.

(Government Finance Officers Association, 2023). The right to see government information is not for a “particular group,” but rather, to every citizen. Government, as the U.S. founders appeared to believe, should not charge its citizens money to interact, just as a person would not be levied a cover charge to attend city council meetings, a poll tax to vote, or a consulting fee to talk with one’s elected official. Some parts of democracy, to empower all citizens, should be free, and agencies should adequately fund their public records mission without fees.

Demographic variables remain inconsistent in predicting opinions on FOI experiences and more granular FOI opinions (rather than support for general government transparency principles). The present study

Table 6
Binomial Logistic Regression Predicting Relationships with Dependent Fee Variables.

Variable	Flat Fees Support	> Use After Elimination of Fees
	B (SE)	B (SE)
Age	-0.017 (0.101)	-0.361*** (0.102)
Male	-0.285 (0.297)	0.134 (0.294)
Education	0.077 (0.230)	-0.252 (0.238)
Income	0.094 (0.070)	-0.145* (0.072)
White	1.915* (0.768)	0.848 (0.463)
Liberal	0.334 (0.297)	0.278 (0.298)
Geography		
New England	0.483 (0.568)	1.299* (0.585)
Mid-Atlantic	-0.264 (0.467)	1.281** (0.466)
E.N. Central	-0.012 (0.504)	1.402** (0.490)
W.N. Central	0.146 (0.737)	1.036 (0.760)
S. Atlantic	-0.158 (0.429)	1.369** (0.434)
E.S. Central	0.332 (0.774)	3.772** (1.225)
W.S. Central	-2.297 (1.479)	1.149 (0.933)
Mountain	0.328 (0.525)	0.458 (0.522)
Pacific	-	-
U.S. Terr.	-0.692 (0.997)	1.936 (1.185)
Private citizen	0.457 (0.612)	0.802 (0.573)
Commercial	0.652 (0.763)	0.852 (0.729)
Journalist	0.729 (0.602)	0.963 (0.566)
Lawyer	0.485 (0.661)	0.671 (0.632)
Nonprofit	0.406 (0.657)	0.165 (0.616)
Academic	-1.132 (0.864)	0.876 (0.735)
Request freq.	-0.045 (0.134)	0.012 (0.134)
Federal request exp.	0.169 (0.127)	0.098 (0.124)
State request exp.	0.118 (0.153)	-0.372* (0.152)
Local request exp.	-0.345* (0.140)	0.282* (0.138)
Nagelkerke R ²	0.204	0.252
Cox & Snell R ²	0.148	0.185

* $p < .05$, ** $p < .01$, *** $p < .001$.

Note: Pacific is the reference category for the Geography categorical variable.

suggests FOI requester traits, rather than requester demographics, are likely stronger drivers of experiences and opinions. When it comes to finer details of FOI, it appears to be a matter of how the individual uses the law and less about the personal traits of the individual, which is both logical and a testament to requesting processes.

6.1. Limitations and future research

The study is limited by generalizing FOI requesting experiences as a singular experience, when it is known that the record sought, the public office submitted to, and even small matters like the tone of a request

letter can influence experiences and fees. The study has examined demographic, geographic, and requester type factors, but future research should examine requester experience more deeply by also considering the type of records they seek to acquire and considering the varying laws and exemptions governing records disclosure. Requesting records for police body camera footage could result in far different fees than a city budget document. Stratified random sampling in the third survey wave can account for those differences but could not be accounted for in the first two waves (e.g., perhaps a higher percentage of MuckRock requests are for body camera video).

Also, the study fails to make distinctions on fee estimates and in particular how digital progress is changing record requests. Further research should look more closely at the impact of digital technologies on fees and access, particularly in acquiring datasets, email metadata, and other electronic records. And, finally, this study is based on a survey and correlations, and while this adds valuable insight it is confined by the limits of quantitative research. This is especially notable given the study’s focus on gauging emotion, experience, and human interaction. Further research employing qualitative methods, such as interviews, as well as experimental empirical research, could examine the impact of fees requester behavior, not just attitudes and perceptions.

6.2. Conclusion

Since the advent of U.S. FOIA, the concept of fees has been grounded in three ideas. The simple concept of user charges—those that use and benefit from the system pay to make it go—has been foundational. But the primary objective is to give the citizens witness to government activities, so public interest has been identified and supported. While these two tensions pull at each other, quietly fees have been used to control requester behavior and discourage voluminous or frivolous requests. This historical discourse around fees drove the creation of different classes of requesters. Ostensibly, this establishes a system where commercial and frivolous requesters pay to support the FOI system, while publicly spirited requesters are able to access government at little or no expense. In practice, however, it has created sharp divides between those expected to pay for requests and those able to mount convincing arguments as to why their request would serve the public interest. And while the history of the fees is U.S.-specific, these justifications are universal. All scholars of FOI, no matter the location, will find similar fees rationales, and the authors believe are quite likely to see comparable requester experiences and behaviors.

The study has documented that fees inordinately impact certain subsets and demographics of requesters, undermining the egalitarian, democratic objectives of the law. It is paradoxical that in an increasingly digitized records environment, some jurisdictions, like Canada, are growing fee regimes through requisite application fees. Despite the visions of some legislators, FOI fees will never fully support FOI administration, much less turn a profit. Roberts and Pall have demonstrated that FOI will never be self-sustaining. Instead, aggressive pursuit of fees merely adds another task to already overburdened agency staff. Worse, aggressive pursuit of fees drives away subsets of requesters, reserving government records for those able to navigate a complicated system. Fees serve as a barrier for those that cannot pay, namely, regular citizens, journalists, and scholarly researchers, among others. Our results indicate that fees create inequity by privileging those who can pay—such as lawyers and businesses—to the detriment of citizens.

Author statement

Both authors—Drs. A.Jay Wagner and David Cuillier—shared in all aspects of conceptualizing, designing, writing and reviewing the manuscript. The authors contributed roughly equally in all facets of the manuscript’s manifestation and agree to share credit equally.

Declaration of Competing Interest

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

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