

Regulatory Oversight Podcast**12 Days of Regulatory Insights: Day 4 – Open Records Realities****Speakers: Lauren Fincher and Brian O'Reilly****Aired: December 9, 2025****Lauren Fincher (00:04):**

Welcome back to the special holiday edition of our *Regulatory Oversight* podcast series, the 12 Days of Regulatory Insights. This 12-episode series is focused on key highlights and trends from this past year in various areas and designed to keep our listeners informed and engaged during the holiday season. My name is Lauren Fincher. I'm a partner in the Regulatory Investigations Strategy and Enforcement or RISE Practice Group and a member of our state attorney's general team. Before we get started today, I wanted to remind all of our listeners to visit and subscribe to our blog at regulatoryoversight.com so you can stay up to date on developments and changes in the regulatory landscape. In today's episode, I'm joined by my colleague Brian O'Reilly, to discuss recent developments and trends in open records laws. Brian is a partner in the RISE Practice Group and practices in transportation, administrative and public law, focusing on the development of major infrastructure projects by public and private entities. Thank you, Brian, for joining me today.

Brian O'Reilly (01:15):

Thank you for having me.

Lauren Fincher (01:17):

Brian. Both you and I regularly practice in the area of public records and foia. What has always interested in me is the diversity of perspectives involved in the public records realm depending on whether you are a party seeking to protect information provided to the government, for example, as a contractor or in response to government investigations or whether you are representing a governmental body in determining potential disclosure obligations and exemptions. Can you talk to us at a high level about this diversity of perspectives that are often competing in the open records realm?

Brian O'Reilly (02:00):

Yeah, a lot of my work is here in Texas and dealing with the Texas Public Information Act and a large portion of my clients are governmental entities. And what I will do for them is then when they receive a request, we will determine if any of the information is subject to an exception, is something that they would want to protect as the governmental entity. And then we would go through that process. And then at the same time, on the flip side, it might be helping a third party, a private entity that is contracted with a governmental entity or that may is submitted a proposal to a governmental entity and a request has implicated their records and they do not want those to be released. And so we'll help them from that perspective. And there's different portions of the law that apply to each of them, and you have to navigate that. So we do those

kind of things. We also even help with provisions on the front end, providing language for contracts that will help to protect records if a request does come in for them. We'll seek opinions from the attorney general's office to protect records and in some cases we'll even go to litigation over a ruling from the attorney general's office. So it can be a wide range of things that we do.

Lauren Fincher (03:04):

Thanks, Brian. And I always find it very interesting as well, the sort of strategic nature of considering the landscape of open records laws and how certain representations may be complex and thinking through how best to utilize those laws in order to obtain information to the benefit of some of our clients and also the different points along that path, as you mentioned from sort of the get go in terms of proactive advice on the front end all the way through litigation if necessary. I think as well, Brian, something we frequently discuss is best practices related to some open records issues for companies, specifically companies in the third party position. Can you talk just at a high level of what types of considerations from a counseling perspective you may review with a third party who may find themselves in the position of submitting information to the government, for example, in the contractor perspective?

Brian O'Reilly (04:08):

Well, I think the first thing is everyone needs to be aware, and it's surprising how many people don't quite grasp this, but when you send something to the governmental entity, it's subject to release, it becomes public information once it's in their possession. And if you are handling your proprietary information and your pricing and anything that you do not want others to see, you need to understand that once you hand it over the governmental entity, there is no guarantee that it will be kept confidential. You're essentially subject to an employee at a governmental entity releasing it or not. And many times, if it is released, you have no recourse. So that's I think the biggest thing that people need to be aware of when they are contracting with a governmental entity. And then there's other strategic ways as a private entity to use the act. For instance, if you are a losing proposer or if you're proposing on a new project and you want to see what your competition has submitting open records requests to seek that. I think a lot of people kind of don't think about that, but there are ways to kind of try to get the strategic head start, if you want to call it that.

Lauren Fincher (05:12):

Brian, I think we would be remiss in 2025 to have a podcast episode on any subject that did not touch on AI or technological advancements in the area of FOIA. And public records we're certainly not immune to the impact of ai and again, the technology as it's progressing. Can you talk a little bit about how you have observed AI or technology more broadly impacting the area of open records?

Brian O'Reilly (05:45):

Yeah, something I've seen recently actually is the nature of requests when they're coming in, they're different. I'll explain that. Let me back up to what we were talking about earlier about representing private entities or third parties. And when making a request for governmental entity, a lot of times I tell them, keep it simple. Keep your request very clear. You don't need to

get into too much legalese. It's not a discovery request. It's very different from litigation and it can make receiving the records faster. And that's generally the advice I get. Now what we're seeing is requests that are coming in that are extensive and lots of legal language, and they're coming from regular citizens, not from a law firm. And under the Texas public information, you're not allowed to ask why someone wants something. But when you get these type of requests, you kind of read between the lines and you're starting to see that I believe a lot of them are using AI to draft their requests. And what I'm seeing too is it's including things like litigation, hold notice or preservation notices. And that is inadvertently on the part of the requester triggering an exception that the government entity could possibly argue that there's anticipated litigation when that really was never the case. And so getting maybe a little too cute, for a lack of better phrase, these AIs being used to draft requests, it's interesting development that we're starting to see more of.

Lauren Fincher (07:04):

So in other words, you are seeing sort of a trend or practice of individual citizens who are making requests of governmental body that are clear, were composed using an AI tool. And it sounds like Brian, a bit of a mismatch between the language of what's being requested using those tools on top of the overlay of what the open records laws provide.

Brian O'Reilly (07:29):

Right, exactly. Another thing, and this isn't necessarily an AI issue, but a technology issue. There are more and more forms of communication every day, right? We have emails, we have text messages now we have teams, these governmental entities. Every time you send one of those, it's creating a new record. It's creating a new record. It's something that's going to be subject to a request. And the volume of responsive records are increasing substantially. And it is becoming a large burden on some of these entities to comply with records requests when there are thousands and thousands of pages and gigabytes of documents to go through to determine what's responsive. And it's a problem that's not going to get, it just gets worse and worse on the governmental lending standpoint. You can use that to your advantage as someone making a request, I suppose. But it's another trend that we really need to watch as it develops.

Lauren Fincher (08:23):

And I think it's interesting too, Brian, what you just alluded to in terms of technological advances, various new types of data, information storage, really increasing the volume of potentially responsive records. I also think it's been interesting to observe debate and discussion, especially at the state level amongst governmental bodies about what tools, technological tools are required on their end to facilitate their open records. For example, I know I've seen some back and forth of regarding software, for example, software that does automatic text message archiving and various other things. And it seems to me like there's a real question there about what are governmental entities required to do in terms of having those tools at the ready to be able to gather information versus the cost and burden on the public records and open records divisions at these individual agencies. I'm not sure if you've seen any discussion on that or have any thoughts.

Brian O'Reilly (09:30):

Well, a lot of times entities like newspapers, publications that they're very much on open sunshine laws, and I've seen legislation pushed where they make requests for governability and they want to see a database of names, whatever the reason would be. And it's in an Excel sheet searchable. Well, a lot of times, I mean, governmental entity will just produce it as a PDF, and it's not a manipulative a document you can manipulate and just the format of the records, there's a battle over what you should be producing and what can be produced. So the type of record, what programs you're using to find them, all of that. And then the other thing is the governmental entity can't recoup costs for a lot of that as well. There's very specific statutory provisions on what costs a governmental entity could pass onto a requester, and it's very limited. And so paying for a expensive software program to search through text messages can hinder especially smaller government loan. So

Lauren Fincher (10:26):

That's right. And I think also at the federal level too, when we think of foia, I mean there's been a lot of reports this year about resources being cut back, right? And federal employees who are doing FOIA work being reduced in capacity in terms of not even having the manpower to address some of those, some of those. So Brian, we've touched at a high level on AI and technology, but what are some other trends that you've been observing here at the end of 2025, either in terms of the types of open records requests made or strategy for either governmental entities or requesters who are making such requests?

Brian O'Reilly (11:09):

You always see the requests for people's other competitors' proposals. I mean, that's probably one of the most common things you get put through. Something I've seen a lot of lately though, is companies requesting lists and contact information for staff of government lending in particular, specifically IT departments. And generally, I believe they're seeking this because they're trying to poach employees. They're head under firms because IT employees are valuable currently. And the government lending obviously doesn't want their employees to be poached. But what I'm hearing from our IT folks is that they see that as a security risk knowing the identities of all the employees and being able to hack into systems. And so we have argued to protect that information, but there really is no avenue, at least here in Texas, to protect that from a public Information Act request. And we've received some adverse rulings from the attorney general's office, which we expected, and then immediately turned around and have challenged those rulings. And now we have some suits pending, but it's surprising. I've seen it more and more, so I'm not sure where that's coming from, but it's just a trend I'm seeing.

Lauren Fincher (12:16):

So speaking of trends from this year, Brian, in 2025, I think there were at least 10 states that had modifications to their open records laws take effect, and others that have had varying efforts to modify such laws. And one topic that seems to be frequently at issue is the timeframe for responding to certain open records requests. Just recently on October 9th, 2025, the governor of New York vetoed a bill that would have set a maximum allowable timeframe for organizations that are covered under New York's FOIA to respond to record requests. And

currently New York FOIA requires a response within five business days to a request. However, that deadline can be easily extended by the responding entity. And there was a new bill, senate bill 25 20 B that would have set a 60 day maximum response time and would've required the agencies to explain any delays to a committee on open government. Ultimately, again, the bill was vetoed citing of the existence of such deadlines as arbitrary and noting that the bill did not actually allocate more funds for FOIA offices potentially to be able to comply with the anticipated deadlines that would've been implemented in that bill. Any thoughts, Brian, on sort of the timelines more generally? Any activity that you've seen on the legislative front in terms of whether we may expect more on that topic in 2026?

Brian O'Reilly (13:55):

Well, I always think it's fascinating to see other states and how they address the timeline issue. You and I have done work in a number of states under their open records acting in addition to foia, but Texas, our Public Information Act has been around for 52 years now, and it's a pretty substantial body of law. And one of the aspects of that that is unique and frankly a challenge from the governmental entity perspective sometimes is the debt that deadlines, when you receive a request, you have 10 business days to either release the information, seek a decision from the attorney general to protect the information or tell the requester a date certain that you'll provide them the information. And there is no extension of that deadline. It is 10 days and there is no way around it. And so if you are on vacation, if anything's happened, this is not like litigation. So if your governmental entity, entity in a lawsuit and there's a request for information and you're trying to protect it as anticipated litigation, it may be an open and shut case that it's protected information. But if you miss that 10 day deadline, unless it's confidential by law, the discretionary exceptions, they're not available to you. So a lot of these other states I think are more flexible. I don't see Texas going that way, but it's good to see that some of the states are sort of addressing deadline issues. They could be extended indefinitely. I've seen,

Lauren Fincher (15:14):

And again, Brian, we don't have a crystal ball obviously for 2026, but I do think it's interesting and I think something our team is watching. We've talked about AI and data implications. I am very curious to see whether any states in particular attempt to modify their public records laws to account for different and new types of technology or data, and really just to see whether there's going to be any impact on the existing body of law in that respect. Do you have any predictions or thoughts on whether that's likely to occur?

Brian O'Reilly (15:54):

Well, we get involved in drafting legislation here in Texas, and one thing I'll say is that it's difficult to legislate technology when by the time you've passed it maybe through one chamber, the technology has already changed. It's tough to put, I mean, you go through it now and there's references to fax machines and pagers, which obviously are no longer really apply. And so it needs to be addressed, but it's a difficult thing to put in statute when then you have to comply with something that it becomes difficult to comply with it once the technology has changed. So it's a big point to keep in mind.

Lauren Fincher (16:25):

Well, great. Thank you, Brian, for joining me today to discuss this critical and ever evolving area of law. And thank you to our listeners for tuning in. Please make sure to subscribe to this podcast via Apple Podcast, Google Play, Stitcher, or whatever platform you use. Stay tuned for the next episode of Troutman's 12 Days of *Regulatory Insights* podcast. Happy holidays, everyone.

Copyright, Troutman Pepper Locke LLP. These recorded materials are designed for educational purposes only. This podcast is not legal advice and does not create an attorney-client relationship. The views and opinions expressed in this podcast are solely those of the individual participants. Troutman does not make any representations or warranties, express or implied, regarding the contents of this podcast. Information on previous case results does not guarantee a similar future result. Users of this podcast may save and use the podcast only for personal or other non-commercial, educational purposes. No other use, including, without limitation, reproduction, retransmission or editing of this podcast may be made without the prior written permission of Troutman Pepper Locke. If you have any questions, please contact us at troutman.com.

DISCLAIMER: This transcript was generated using artificial intelligence technology and may contain inaccuracies or errors. The transcript is provided "as is," with no warranty as to the accuracy or reliability. Please listen to the podcast for complete and accurate content. You may [contact us](#) to ask questions or to provide feedback if you believe that something is inaccurately transcribed.