

# Forcing Transparency

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**U**sing State Public Records and Freedom of Information Laws to Get Records & Statistics from Animal Shelters

Getting records and statistics from public entities is supposed to be easy – we are a nation that prides itself on open government. We are a democracy, and – in theory at least – the people are the government, and have a right of access to all public records.

In practice, it's a little different. Many public agencies have a reluctance to release records to the public or they make it unduly difficult, as if they have something to hide. This is antithetical to good government. Thankfully, it is also against the law. Every state in the nation has some version of a Public Records Act, or Freedom of Information Act. These laws are designed to insure public access to all data and documents held by a public entity, with limited and narrow exceptions.

If you are trying to get information from your local animal shelter, such as statistics, policies, or information on particular animals (such as the circumstances surrounding an animal who was killed, why the animal was killed, who made the decision to kill the animal, and who actually killed the animal), most of that should be available to you without argument. This guide will provide the basic information on how to go about getting the documents you want. But first, it is important to remember that



while these laws apply to government shelters, and not private shelters, they often apply if the private shelter is contracting for animal control. Many courts have held that government cannot avoid their “open government” requirements simply by contracting the function to a private organization.

## Step One: Finding the Pertinent Law

Every state has a different law, so you will need to look up the exact law that exists in your state. There are a number of excellent websites to help you get that information:

- The First Amendment Center has a good general overview of the process. Go to <http://tinyurl.com/lqbnas>
- The Reporters Committee For Freedom of the Press will help you generate a public records request, and even tailor it to your state. Go to <http://tinyurl.com/ouemoz>

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If you are doing a web search, you can also type in "Freedom of Information Act," "Public Records Act" or "Sunshine Act." These will result in links to public records act search information, as well as overviews of the law, and specifics for various states.

## Step Two: Drafting the Request

Once you have an idea of what your state's laws are like, it's time to write your request. The request should be complete, but not too complex. At the beginning of your letter to the agency, cite to the law of your state. For example, "Pursuant to the California Public Records Act, Government Code §6250 *et seq.*," I am asking for the documents described in this letter. Under that Act, you have ten days within which to respond."

*Remember to start with the law of your state. That provides the template for moving forward. Then figure out the problem, then draft the request to give you the data you need to solve the problem. Use the websites provided for additional tips on getting the information from your agency. Most of all, remember that the government is run by the people, for the people. You have a right to this information.*

If your local shelter is city or county run, you might want to call and find out who the public information officer is and get their fax or email address. Many larger cities now provide for public information requests to be sent to this person, rather than the individual agencies like the animal control department.

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\* The term "*et seq.*" means "and following," so it is used to simplify citation to a series of code sections. Rarely is an act, such as the Public Records Act, contained in a single code section. Normally, it would be in multiple sections, so you cite to the first section of the Act, then add "*et seq.*" to indicate you are referencing the full Act.

If your state has a law that requires record keeping, use that law to help enforce your request. In California, the Food and Agricultural Code mandates each animal shelter to maintain certain types of records. Therefore, in enforcing your records request, you can cite to that law in support of request.

There is a tendency to write a request so that it covers every possible angle. Instead of writing a really long sentence, simply ask for the items you want in separate numbered requests. For example, if you want all records, for both cats and dogs, use separate requests. On the other hand, if you want records that would logically be kept together, ask together. For example, this would be a request concerning cats:

Any and all documents and records, whether in electronic form or otherwise, for all cats impounded for the calendar year 2009, which records show date of impound, date of disposition, condition at time of impoundment, and whether the animal was impounded as a stray, an owner relinquished animal, or taken in in some other fashion. The records should be those which specify the date the animal was taken in by the Animal Services Control Division, the breed designation listed by Animal Control personnel, and whether the animal was taken in alive, injured or deceased.

It is important to ask for both paper records and electronic records,

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because most agencies keep some of both. The Chameleon computer software system is used in a number of agencies, and Chameleon can keep all the data you need on one screen. Unfortunately, it can also be edited. Ask for everything you think might be included in a computer record. If you know for a fact that the agency uses computer software, reference the system in your request, like this:

The agency uses the Chameleon computer software program to maintain records on the animals under its care. Therefore, we ask for all information stored in the system for cats for the calendar year 2009, including date of impound, date of disposition, condition at time of intake ... (and et cetera).

It is sometimes helpful to know about the personnel at the shelter. For example, in some states, there is required training. You can ask for information on the shelter personnel, but you need to do it in small pieces. Some personnel information is going to be privileged, such as their personnel file, with any written complaints or reprimands. So ask for distinct bits of information, and you may get more, such as:

Any and all documents and records showing the final disposition of each animal listed in response to Request No. 1, above, including the name of the person who killed the animal.

Then follow up that request with:

For each person who acted to kill an animal for the Animal Services Control Division for the calendar year 2009, proof of any and all training provided to that person in the killing of animals.

With this, you should be able to determine if the staff member who killed an animal had actually been trained to do so. In some states, training is required by law, and failure to train can require a staff member to be relieved of duty.

Use of "euthanasia" drugs is often an issue as well. These drugs are controlled substances under federal law, and the federal government has very strict requirements governing use and storage. The local agency must also file reports with the federal government on the amount of drug used.

If you are concerned about the use or disposition of these drugs, you may want to ask for records. You can ask the agency, and if you still have issues, consider making a Freedom of Information Act request (which is the federal version of the law insuring the public's right to records) to the federal agency. For the local jurisdiction, you can draft a request that says something similar to this:

Any and all documents and records, whether maintained in electronic form or otherwise, for the calendar year 2009, records showing the type of euthanasia drugs used by the Animal Services Control Division, the manufacturer of each drug listed, any documents showing the amounts of the drugs utilized, and any written policies provided to Animal Services Control Division personnel concerning the use, storage, and record keeping for euthanasia drugs.

As noted, agencies may claim privilege and refuse to release certain types of information. Often, that includes the name of the adopting party. If they refuse to provide it, and you do not

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have the ability to challenge their denial (see Step Three below), you might also try to find other ways in which to get the information you need. If you are simply looking for people who had interaction with the agency, in order to find out how they were treated or the health of the adopted animal, try other methods of outreach, including internet postings (such as twitter, craigslist, face book, and other social marketing websites), newspaper ads, community bulletins, and other public forums.

Often, you will want to determine the ability of the agency to properly care for the animals within its care. Asking for medical records is one option. This is one example of such a request:

Any and all documents and records, whether maintained in electronic form or otherwise, showing a description of any medical care provided to any of the animals listed in response to Request No. 1.

If you have a specific concern, list the animal in question by impound number, date of impound or other identifying information.

You will also want to get whatever stated policies are in effect at the shelter. Ask for:

Any written policies, procedures and guidelines promulgated by Animal Services for the operation of any animal shelters maintained by Animal Services Control Division for the period January 1, 2000 to the present.

You will notice that each request has a time period associated with it. Ask for the time period you need, plus a little on both sides. If you need the month of July, ask for June, July and August.

Be careful about asking for too much, because you will most likely have to pay for copies, and you don't want to pay for copies that won't help you.

Each jurisdiction is slightly different, and the problems at each shelter will be slightly different as well. Figure out what you need to know, and then draft the request to match the need. If you need to know why the save rate is so low, you might need to find out whether the holding periods are being honored, or whether medical care is being provided. You might need to find out if volunteers are allowed in the shelter to help in re-homing, or whether the shelter is scanning for microchips or calling names or numbers on an animal's tags. Figuring out what to ask for is as important as drafting a good request.

In your request to the agency, make sure you provide all of your contact information, including an address, phone number, and email address (if available). Keep in mind that a "reasonable" charge can be imposed for copies that are provided. You may want to include a statement at the end requesting them to inform you of any charges for copies so that payment can be promptly made. Usually, if a lot of documents are not required to be provided, there is no charge. If you think the charges are unreasonable, your state law usually has a method for challenging the charges. Follow up with the agency in the time period indicated in the law. For example, if your state's law says the records must be provided within 15 days, and you haven't heard anything back within 20 days, call or write another letter.

The agency may reply by providing you with thousands of individual kennel cards. In such a case, you will



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likely have to go to the agency and review the documents in person, because the cost of copying the documents will be too much. Under those circumstances, there should be a provision in your state's law which requires the agency to allow you the time and space to review the records. They cannot tell you that they are too busy to allow you access to the records, or that they don't have the space. The law will say something along the lines of, "The public shall be allowed access to the records," and you need to tell them that following the law is not optional, and does not depend on their perception of what is important and what is not.

### Step Three: Enforcing the Law

Even where the law is clear, however, an agency may ignore your request. There are a lot of reasons for this. Sometimes, they are not aware of the law. Other times, they have something to hide and are waiting to see if you will force the issue. As a first step, you should send another letter, reminding them that the deadline for replying has passed and asking them to reply immediately.

If that doesn't work, call the attorney representing the agency. That might be a county staff attorney or a city attorney's office. Explain as reasonably as you can that you are having difficulty obtaining records under a public records act request, and you were hoping for their assistance. Offer to provide them with a copy of your request, and be prepared to explain in detail what was given to you, and why specifically it does not meet the parameters of your request. Sometimes, these attorneys will be able to slice through the

objections of the agency, and get you the records you need.

If they still will not respond, contact your State Attorney General's (AG) office. Some AG's are authorized to enforce public-information acts. Often, a letter to the entity from the AG may be all that is required to get the information you need. And in some states, for example, the AG may file a lawsuit on your behalf to require the animal control agency to reveal public information.

If none of that works, your final step is to file a lawsuit against the agency under the Public Records Act of your state. The details of such an action are beyond the scope of this paper, and you should probably contact a local attorney to discuss it. Because this is a Public Records Act issue (and not an animal issue), you should find someone who is experienced in suing public agencies or who specializes in Constitutional law.

If you are unable to afford an attorney, contact groups like the ACLU, your local or state legal aid office, local animal protection groups, or a group like the Animal Legal Defense Fund for a pro bono referral.



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