

Soft tactics and principled negotiation

Access laws are essential, but sometimes officials thumb their noses at them and suing is the only answer. But if you can get the records by persuasion, even better. Below are tips for getting sources to comply with requests, based on the theories and application of “principled negotiation.” These techniques are advocated by such experts as William Ury, co-founder of the Harvard’s Program on Negotiation and author of “Getting to Yes.” I suggest reporters always approach their sources in this frame of mind. With enough practice you’ll get a lot of agencies to comply without threats of litigation or hard tactics.

Argue interests, not positions

Argue for your interest (I wish to analyze ambulance response times to find trouble spots), not positions (I want your database). If the agency understands why you want the information they are more likely to be cooperative. Of course, you are not obligated by law to explain that and you might not want to tip them off. But in reality they can figure it out most of the time so being up front is a good option. Then, they can argue their interest (we don’t want to invade anyone’s privacy). You can work out a solution when you understand interests. Positions cause both sides to dig in.

Allow face saving

If you box an official into a corner early on they might feel like they have to stick to their guns no matter the cost, especially if they denied the information in front of their superiors and subordinates. Talking with the person informally first, before they commit to an action, gives the person more leeway to agree to your request. Or, suggest the legal department examine the issue and let them make the decision – that will relieve the official of the shame of changing his or her mind (e.g., “sorry folks, I had to say yes because the attorneys said I had to release it.”)

Use people skills

Allow officials to vent. Listen first, then repeat what you heard (whether you agree with it or not). Use “I” statements, not “You” statements. Talk to people informally side-by-side, not facing across a counter, creating psychological “opposition.” You want to look like the good, reasonable person. Let them look like the jerks.

Apply negotiation jujitsu

Bend like the willow, don’t break like the oak. Invite criticism and advice for how to analyze the information. If they say the record is a waste of time then ask what record would be a better use of time. Use questions instead of statements. Use silence after an unreasonable attack. Invent different options and alternatives, and end conversations with a compliment. Ultimately, if you find yourself getting angry or are denied, calmly write down what is said, thank the person, and say you need to do some more research. Leave and figure it out, then come back and discuss further.