



Milwaukee's Alternative News Source

The Foilies 2022

Part One of a series recognizing the year's worst abuses against freedom of information

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Each spring the *Shepherd Express*' alternative media partners, the Electronic Frontier Foundation and MuckRock, serve up The Foilies, tongue-in-cheek "awards" for government agencies and assorted institutions that stand in the way of access to information. Our goal is to identify the most surreal document redactions, the most aggravating copy fees, the most outrageous retaliation attempts, and all the other ridicule-worthy attacks on the public's right to know.

And every year since 2015, as we're about to crown these dubious winners, something new comes to light that makes us consider stopping the presses.

As we were writing up this year's faux awards, news broke that officials from the National Archives and Records Administration had to lug away boxes upon boxes of Trump administration records from Mar-a-Lago, President Trump's private resort. At best, it was an inappropriate move; at worst, a potential violation of laws governing the retention of presidential records and the handling of classified materials. And while Politico had reported that when Trump was still in the White House, he liked to tear up documents, we also just learned from journalist Maggie Haberman's new book that staff claimed to find toilets clogged up with paper scraps, which were potentially torn-up government records. Trump has dismissed the allegations, of course.

This was all too deliciously ironic considering how much Trump had raged about his opponent (and 2016 Foilies winner) Hillary Clinton's practice of storing State Department communications on a private server. Is storing potentially classified correspondence on a personal email system any worse than hoarding top secret documents at a golf club? Is "acid washing" records, as Trump accused Clinton, any less farcical than flushing them down the john?

Ultimately, we decided not to give Trump his seventh Foilie. Technically he isn't eligible: his presidential records won't be subject to FOIA until he's been out of office for five years (releasing classified records could take years, or decades, if ever).

Here are seven of this winners, who are all shameworthy in their own rights and, at least metaphorically, have no problem tossing transparency in the crapper.

The C.R.E.A.M. (Crap Redactions Everywhere Around Me) Award

U.S. Marshals

The Wu-Tang Clan ain't nothing to F' with ... unless the F stands for FOIA.

Back in 2015, Wu-Tang Clan produced Once Upon a Time in Shaolin, but they only produced one copy and sold it to the highest bidder: pharma-bro Martin Shkreli, who was later convicted of securities fraud.

When the U.S. Marshals seized Shkreli's copy of the record under asset forfeiture rules, the Twittiverse debated whether you could use FOIA to obtain the super secretive album. Unfortunately, FOIA does not work that way. However, BuzzFeed News reporter Jason Leopold was able to use the law to obtain documents about the album when it was auctioned off through the asset forfeiture process. For example, he got photos of the album, the bill of sale, and the purchase agreement.

But the Marshals redacted the pictures of the CDs, the song titles and the lyric book citing FOIA's trade secrets exemption. Worst of all, they also refused to divulge the purchase price—even though we're talking about public money. And so here we are, bringing da motherfoia-ing ruckus.

Expand

(The New York Times would later reveal that PleasrDAO, a collective that collects digital NFT art, paid \$4 million for the record.)

Wu-Tang's original terms for selling the album reportedly contained a clause that required the buyer to return all rights in the event that Bill Murray successfully pulled off a heist of the record. We can only daydream about how the Marshals would've responded if Dr. Peter Venkman himself refiled Leopold's request.

The Operation Slug Speed Award

U.S. Food and Drug Administration

Expand

The federal government's lightning fast (by bureaucratic standards) timeline to authorize Pfizer's COVID-19 vaccine lived up to its Operation Warp Speed name. But the Food and Drug Administration gave anything but the same treatment to a FOIA request seeking data about that authorization process.

55 years—that's how long the FDA, responding to a lawsuit by doctors and health scientists, said it would take to process and release the data it used to authorize the vaccine. And yet, the FDA needed only months to review the data the first time and confirm that the vaccine was safe for the public.

The estimate was all the more galling because the requesters want to use the documents to help persuade skeptics that the vaccine is safe and effective, a time-sensitive goal as we head into the third year of the pandemic.

Thankfully, the court hearing the FOIA suit nixed the FDA's snail's pace plan to review just 500 pages of documents a month. In February, the court ordered the FDA to review 10,000 pages for the next few months and ultimately between 50,000-80,000 through the rest of the year.

The Spying on Requestors Award

FBI

If government surveillance of ordinary people is chilling, spying on the public watchdogs of that very same surveillance is downright hostile. Between 1989 and at least 2004, the FBI kept regular tabs on the National Security Archive, a domestic nonprofit organization that investigates and archives information on, you guessed it, national security operations. The Cato Institute obtained records showing that the FBI used electronic and physical surveillance, possibly including wiretaps and "mail covers," meaning the U.S. Postal Service recorded the information on the outside of envelopes sent to or from the Archive.

In a secret 1989 cable, then-FBI Director William Sessions specifically called out the Archive's "tenacity" in using FOIA. Sessions specifically fretted over former Department of Justice Attorney Quinan J. Shea and former Washington Post reporter Scott Armstrong's leading roles at the Archive, as both were major transparency advocates.

Of course, these records that Cato got through its own FOIA request were themselves heavily redacted. And this comes after the FBI withheld information about these records from the Archive when it requested them back in 2006. Which makes you wonder: how do we watchdog the spy who is secretly spying on the watchdog?