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## Theorizing freedom of information: The live archive, obfuscation, and actor-network theory

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## ABSTRACT

Freedom of information (FOI) is typically analyzed as a law and legal discourse. In sociology, criminology, and socio-legal studies, FOI is also increasingly used as a method to generate disclosures about inside government practices. Absent from this growing literature regarding FOI are reflections on how to theorize FOI processes and their relation to state power and information. Drawing from information and archival studies, sociologies of secrecy and deception, and actor-network theory, we advance three frameworks to make this contribution. First, we conceive of FOI as a crucial component in the live archive. Second, we conceive of FOI as a mechanism for obfuscation, state secrecy, and legitimacy. Third, we conceive of FOI as an actor-network. In conclusion, we reflect on what these three theoretical approaches and tools add to literature on information, power, research methods, and government.

## 1. Introduction

Freedom of information (FOI) law now exists in over a hundred countries across the globe (Bishop, 2012; Feinberg, 2004), from South Africa (Arko-Cobbah, 2008) to Scotland (Spence & Dinan, 2011) to China (Xiao, 2010) to various post-communist countries (Byrne, 2003). The spread of FOI law has been said to constitute a growing social movement (Beyer, 2014). FOI legislation affords citizens a right to request information from their government (Worthy, 2017; Roberts, 2006, 2005). In some ways, FOI can be construed as an open government initiative (Veljković, Bogdanović-Dinić, & Stoimenov, 2014; Wang & Lo, 2016), though the initial development of FOI laws predates the emergence of “open government” discourse. When FOI intersects with automated online systems and interfaces, FOI is also a matter of interest to e-government scholars and advocates (Porumbescu, 2016). In countries such as Canada and the United States, the jurisdictions with which we are most familiar, FOI laws exist at the federal and state/provincial levels. An FOI request involves a written query for records, a submission fee (depending on the country and law), and correspondence with an FOI coordinator working for the public agency in question. Once an FOI request has been processed, information is subsequently released, and the disclosure package is comprised of government files that become a part of the public record. FOI legislation spells out rules of exemption, redaction, and withholding of files enforced by the FOI coordinator. In official terms and on paper, FOI is

conveyed as a straightforward process of citizens formally asking and receiving a disclosure package from their government (Fig. 1). In practice, the mundane and bureaucratic workings of FOI are more multi-faceted and less linear. Contrary to official discourse, FOI is rarely as simple as sending a request with a cheque and being granted unmitigated access to government records. The practical complexities of FOI are more akin to a Pandora's box insofar as FOI involves creatively handling unexpected barriers and setbacks. It is the disjuncture between FOI in official discourse (the official account) and in practice that justifies the need to theorize FOI. In this article, we advance three diverging yet complementary frameworks to make sense of FOI processes and guide social researchers as they navigate FOI's wild and unpredictable terrain.

Many FOI users are investigative journalists (Cribb, Jobb, McKie, & Vallance-Jones, 2015) but more and more scholars study FOI or use it for research purposes. Existing literature on FOI focuses on rates of compliance and variation in FOI regimes and legal amendments (Wasike, 2016; Worthy, 2013; Worthy & Bourke, 2011; Hazell & Worthy, 2010; Holsen, 2007; Banisar, 2006). There is also literature on FOI as a research tool for qualitative and quantitative researchers (Walby & Luscombe, forthcoming; Savage & Hyde, 2014; Jiwani & Krawchenko, 2014; Lee, 2005; Keen, 1992). Together, we have published empirical findings based on FOI requests in literatures on policing and security (Luscombe & Walby, 2015). We have also published on the methodological challenges of using FOI in

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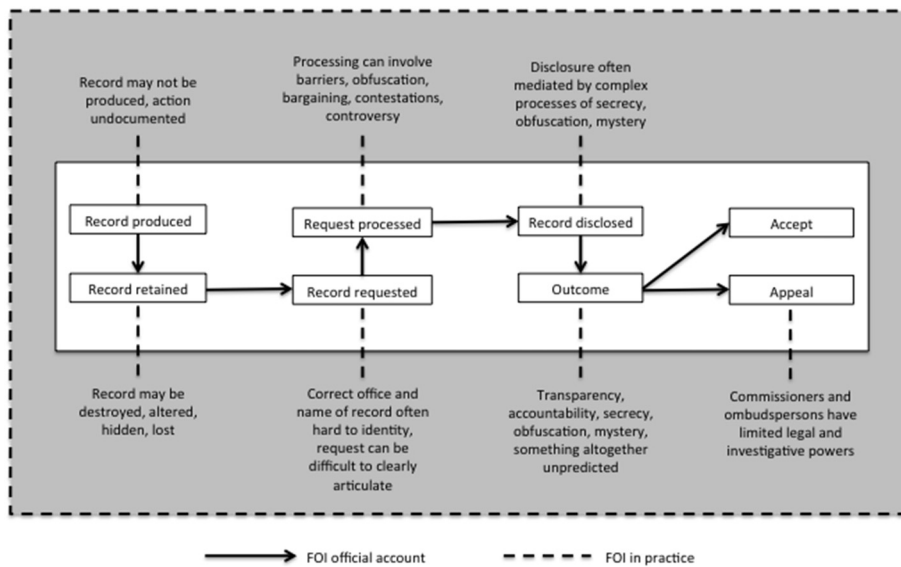


Fig. 1. FOI official account versus in practice.

comparative perspective (Luscombe, Walby, & Lippert, forthcoming).

What is missing from the growing literature on FOI is a conceptual intervention into how to theorize its workings in practice and relation to themes of state power and information. Worthy (2017) uses the idea of symbolic power to show how politicians tout FOI law as a reward to citizens as a way of winning over voters, however the complexity of FOI itself remains inadequately theorized. Roberts (2006) uses literature on secrecy and security to conceptualize some aspects of FOI processes, yet only in small doses. His focus is broader than on FOI law alone. Relly and Schwalbe (2016) explain how business lobby networks shaped the establishment of FOI in the USA, but again the complexity of FOI in action is not the focus. Michener and Worthy (2015) theorize why people gather information using FOI, suggesting that rationales ‘frequently tend toward politicization’ (pg. 1), however our goal is to theorize how FOI unfolds in practice. Drawing from organizational and archival studies, sociologies of secrecy and deception, and actor-network theory, we provide three frameworks to make this contribution.

First, we conceive of FOI as part of the live archive. The live archive framework draws from organizational and archival studies to examine the role of texts in FOI processes in government. Theorizing FOI as live archive encourages people writing on FOI to draw from the larger existing literature in archive studies theorizing the archive and memory, and vice versa. From the perspective of the live archive, both FOI and the public archive are viewed as helping produce accountability and social justice. Second, we conceive of FOI as mechanism for obfuscation and state secrecy. This approach conceives of FOI as upholding a veil that obfuscates and conceals real political power by offering only a modicum of “transparency” to citizens. Drawing from sociologies of secrecy and deception (Luscombe, forthcoming; Bail, 2015; Schilling & Mellor, 2015; Gibson, 2014), this second approach emphasizes the limited outcomes and diversionary mechanisms of FOI and in this way provides a useful counter-balance to the live archive’s more optimistic emphasis on institutional memory and public accountability. Third, bracketing debates about the transparency, accountability, and obfuscatory effects of FOI, we use actor-network theory to document and conceptualize the FOI process. From this perspective, analyses are agnostic about the grand normative ends (e.g. secrecy, accountability) and instead focus on the detailed empirical description of micro-processes of FOI law in action and in the making.

We have selected these three theoretical perspectives because each conceives of information and state power from unique angles using different core concepts (Table 1). The importance of theorizing FOI in these distinct yet complementary ways is three-fold. First, each

framework and the attendant concepts we introduce offer different emphases for inquiry, which helps illuminate different facets and technologies of information management and state practices in the context of FOI. It is not simply about advancing one of these frameworks. Each approach has its usefulness (Gerring, 1999) and place in literature on FOI and the fields of information, organization studies, and socio-legal studies. Second, our theoretical analysis and discussion extends social scientific understandings of FOI beyond policy-oriented studies, and beyond doctrinal, black letter law approaches, both of which tend to be a-theoretical and lack conceptual nuance found in theoretically-oriented fields of study. Third, our focus on FOI provides an opportunity to apply existing theoretical frameworks to a new empirical topic, enriching the areas of study from which the frameworks were derived.

In the first section, we begin by advancing the idea of the live archive, followed by the obfuscation and actor-network perspectives. In conclusion, we reflect on how these three perspectives diverge and complement one another, and what they add to literature on FOI and conceptualizations of information and state power.

## 2. FOI as live archive

Drawing from organizational and archival studies, our first framework conceives of FOI as a *live archive*. The live archive approach conceives of government record production and retention as an archive that FOI users as well as archivists seek to access, manage, and preserve. The whole of government records, from the ‘live’ records FOI users want to access to those that end up in the custody of archivists, is the focus. The goal is to promote record production and retention to ensure all users of government records can access them through paper and e-channels. The life of records begins with government workers whose actions play out in the context of a network of reports, files, emails, and other “little tools of knowledge” (Becker & Clark, 2001), a reality that is also the central starting point of the actor-network perspective (see below). Both archivists and FOI users and advocates share an interest in government workers producing and storing those records for secondary use and analysis. Public memory and accountability starts with the creation of these records (Schwartz & Cook, 2002), but can only be achieved when they are released to a public archive or disclosed through FOI. This approach does not locate the archive in a set time and place. Abstracted from its concrete architectures, the emphasis is instead on the act of archiving, viewed as an instrumental means to an end: archival scientists, FOI users and advocates, and records managers

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