

Hard Tactics

Sometimes you apply the techniques of principled negotiation but an agency just doesn't want to play ball, or purposely chooses not to play fair. Then it's open season and time to apply hard tactics. Below are tips for getting sources to comply with requests, based on the six elements of persuasion by Robert Cialdini of Arizona State University. Also, other strategies are provided for pressuring an agency to release records. Do not use these techniques for evil. Only good.

1. Reciprocation

- **Rejection-then-retreat:** Ask for a lot, then cut it in half. "Can I see all your expenses in database format for the past 20 years? OK, how about starting with just the expense reports for the past five years?" The clerk will appreciate you for simplifying the request and may reciprocate by working faster and being more helpful. Request information that you can give up later, such as social security numbers. If it lands in court a judge might want you to concede something anyway. When it appears you are giving them something then they are more likely to reciprocate.
- **Get-to-know-you stories:** Don't ignore newsworthy positive stories. Occasionally government actually does something right. It's often useful to do a harmless newsworthy project first to get to know people and build trust (e.g., analyze pet license data for a feature on most popular dog breeds/names), then work from there. When you do something positive to someone, psychologically they feel obligated to reciprocate and help you out even more. But don't make up stories or get buddy-buddy. Readers come first.
- **Be a helper:** Check in frequently after the request is filed and offer to help to make their jobs easier. Offer to help copy data or provide CDs for copying. They might not take you up on it but they might appreciate the gesture.

2. Commitment and Consistency

- **Everyone happy:** Ask, "How are you doing today?" When the person says fine, then he or she is more likely to help you. People don't want to appear stingy when they are fine and you are not.
- **Commitment:** Once commitment is made, people try to stick to it. Get commitment verbally: "Do we have an agreement?"
- **Ratcheting (low-balling):** Get a commitment for something small, then it opens the door for getting a "yes" on something bigger. This is the opposite of the reciprocation techniques. "How about if I could see a copy of what a police report looks like. OK, do you have what a case file would look like? What does it look like in your computer system? Any chance I could just get an electronic copy of your reports in Excel for the past year?"

3. Social Proof

- **Peer pressure:** We follow what we see everyone else doing (e.g., canned laughter). This is most effective when people are uncertain and when the reporter is similar to the person. “Boy, all the other towns in the county provide this information. I wonder why it isn’t open here?”
- **Patriotism:** Focus on the importance of what they have to offer to the community. That it’s their duty as Americans to keep government open and transparent, and the community will appreciate it.

4. Liking

- **Looks:** As much as we hate to admit, people often make decisions based on how a requester looks. Dressing well helps; looking shady usually raises suspicions and increases denials.
- **Similarity:** Dress like your sources. Act like your sources. Talk about similar interests.
- **Compliments** that are sincere help.
- **Association:** Disassociate yourself with negative media and people who use information irresponsibly (spammers, identity thieves). Go to lunch with people for a positive association with you and food.

5. Authority

- **Bigger gets better responses.** Journalists from bigger media have more “authority” and tend to get calls returned faster. If you work for a smaller organization, consider teaming up with reporters from other organizations. Cooperative requests can increase pressure for release and serve everyone’s interests.
- **Titles have authority.** Have the request letter co-signed by the managing editor or, depending on the importance of the information, the publisher. Or have the organization’s attorney send it.
- **Government allies.** Get people in government on your side to back you up. Get to know the state attorney general, your state records ombudsman, or others who might be respected in government.
- **Shallow but effective.** Symbols of authority are effective: titles, clothing, automobiles. Even height conveys authority.
- **Cite the law.** The law is authoritative, particularly if it has penalties for noncompliance. Include the citations in your requests and e-mails when you want to exert authority.

6. Scarcity

- **For a limited time only.** What you are offering is limited. “I don’t have time to wait until next week for you to check with the attorneys on this. My deadline is in six hours. Either I get the information or I’m going to have to write a story

for tomorrow morning's paper explaining that your agency is withholding it. I would hate for you all to look like you are hiding something and are bad officials when I know you aren't. The public will appreciate it."

7. Pound lawbreakers into submission

Sometimes you run across a few bad apples in public service (just like there are some bad apples in journalism) who deliberately act in bad faith and deny valid public records requests to hide corruption or embarrassing facts. Remind them who's boss (the public):

- **Go to the top.** Go to the elected officials and ask them why the agency is hiding information. Sometimes elected officials, especially during an election year, would rather avoid a public battle with journalists.
- **Write about it.** Some journalists say it's inside baseball but that's hooey. When an agency says "no" to you, they aren't saying "no" to you. They are saying "no" to the thousands or millions of people in your community. Tell those people. Quote access experts and show why the agency is breaking the law. You would write a story if the agency broke other laws, right?
- **Wave the flag.** Use patriotism as leverage. Communists and Nazis favor secrecy, not god-fearing Americans. Are your officials pinkos and hate America, or are they good citizens?
- **Expose the deviant.** Get the same information from other agencies then ask the secretive officials why they are deviant. Nobody wants to be an outlier.
- **Rally allies.** Find people and groups who want the information and go tell them about the secrecy. It's even better if they are influential business owners, contributors or active citizens. When officials see it isn't a media issue, and they fear the wrath of constituents, they yield.
- **Heads on pikes.** Put together a list of all the other agencies in your state or elsewhere that lost public records battles and had to pay tens of thousands of dollars in lawyer fees (including the requesters' fees). Show them the news articles that made the agencies look bad. When officials see the very real drawbacks of secrecy (heads on pikes), they might wave the white flag.
- **Bury them.** If they deny your valid request and are being stubborn, flood them with more requests. If they are trying to hide one record, you can tell them that you wonder what else they are trying to hide. Make it much more work to deny you records than to comply. Wear them down.
- **Release the hounds (lawyers).** Have your attorney write a terse letter citing the relevant law. The letter, while perhaps unbudgeted, can demonstrate you are serious and will pay off down the road with more records.
- **Sue.** Sometimes all it takes is filing a lawsuit and an agency will cough up the information. In many situations you can recoup your attorney fees, even if you don't go to court. Check out the new NFOIC litigation fund (<http://www.nfoic.org/>) that will cover litigation to fight for records.