**Obtaining the Necessary Documents for your Defense.**

**By Joan Roberts (NCRJ Volunteer) and   
Robert Chatelle (NCRJ Executive Director)**

If you are accused of a crime, you are legally entitled to exculpatory evidence. You can instruct your attorney to obtain documents, or you can expedite the process and save some time and money by doing this yourself. (Your attorney must be kept informed of course.)

**Using FOIA.**

To obtain some of these documents you may need to make use of the Freedom of Information Act (FOIA). While the original act gave citizens access to federal documents, all states have now passed their own FOIA’s. You will need to take advantage of the FOIA in your state to gain access to state and local records.

The Reporters Committee on Freedom of the Press has created a useful web site to enable reporters to use FOIA. But it can be used by anyone who registers and registration is free. The web site address is <https://www.ifoia.org>. It includes a [video tutorial](https://www.rcfp.org/ifoia-help) on how to use the site. (There is also a quick overview video.)

FOIA laws vary from state to state. To see what information is available in your state, see [this guide](http://www.rcfp.org/open-government-guide) on the web site. To see what is available from the federal government, go to [this page](http://www.rcfp.org/federal-open-government-guide).

To obtain information, you will need to specify precisely which records you are seeking. You will also need to know the address of the custodian of the records that you seek. The IFOIA web page has most of the federal information stored on the web page. The amount of state information, however, varies from state to state. For example, the web site has no contact information for records custodians in Massachusetts. Thus you would have to find this out for yourself.

[This web page](http://www.rcfp.org/federal-open-government-guide/sample-letters-and-agency-addresses) has links to some boilerplate federal FOIA requests. These requests are tailored for use by reporters, but they give a good idea of the proper format.

It is not necessary to use the boilerplate. The web site will generate letters for you and even send them for you if you have the email address of the records custodian. If not, you can print out the generated letter and mail it. Copies of these letters will also be retained at the web site.

Once you have all of the information necessary for initiating your request, you can go to [www.ifoia.org](http://www.ifoia.org) and click on [create request](https://www.ifoia.org/#!/makerequest/).

**Which Records Should you Seek?**

1. If the state police are involved file a **Freedom of Information Act (FOIA)** incident report through a state police post. Specify all records and **external documents.**
2. If the Sheriff’s office or city police arrested you fill out a request for the incident report including any **external documents.**
3. If Child Protective Services (CPS/DHS) is involved file a **FOIA request** for their report and a copy of the video interview of the accuser. A mandatory reporter’s identity does not have to be revealed; however, if you think you can prove intentional false reporting in bad faith, state so, and request a complaint form. You can file a criminal complaint for false reporting at the police department.
4. If you have prior arrests or convictions file a **FOIA** for *all* of those records. The state and city police will give you the necessary incidents’ number.
5. If the accuser is a minor who went to counseling and is your own child, go on line to the **state government** site for the Bureau of Health Professions. Download a complaint form. Review the licensee information for credentials and past discipline or civil suits. If the licensee has been disciplined or has been on probation or suspended you can access the entire proceedings via FOIA.
6. Get a copy of your **medical records** and **copies of your children’s medical and mental health records according to state law first** via FOIA.Research your state laws on line for information on medical record access and confidentiality and the definition of ‘psychotherapy notes’. All licensees are not psychotherapists; therefore the laws will be applied differently.
7. Proceed to federal laws for accessing mental health and medical records. Mental health records are comprised of 2 parts and referred to as recorded psychotherapy notes. <https://www.gpo.gov/fdsys/pkg/CFR-2004-title45-vol1/pdf/CFR-2004-title45-vol1-sec164-501.pdf>. Search via 45 CFR section 164.501 for the definition and information on record access.
8. Private practitioners are governed by HIPPA versus state laws. Mental health agencies and their therapists are governed by state laws. State laws also allow for amendments to records kept by agencies; HIPAA allows for amendments of records kept by private practitioners provided that the records at issue are not protected as therapists- privileged records. Your attorney will be able to advise you on this.
9. If your spouse, girlfriend, or any man/woman who has accused you, is in counseling and using your employment insurance to pay for the counseling, request that that person **sign a release of the counseling records**. Notify your employer to stop payment. If you attended any of the sessions **request a release of your records from the counselor including all signed privacy forms and bills.** This must be done in writing; state laws have a timeframe for therapists’ compliance.
10. Research your own **state laws about false reporting**. Find an attorney who has already handled falsely accused cases or cases involving recovered memory therapy in your state by doing a Google search or contacting the False Memory Syndrome Foundation at: <http://www.fmsfonline.org>.