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Brokering Access Beyond the Border and in the Wild: Comparing Freedom of Information Law and Policy in Canada and the United States

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Contributing to literature on jurisdictional variation in freedom of information (FOI) law and policy, we draw from accounts of experiences of FOI requests submitted to police agencies in nine Canadian provinces and ten US states. We conceptualize these experiences using notions of "brokering access," "law in the wild," and "feral law." Our findings demonstrate key differences in how public police agencies store, prepare, and disclose information at municipal and provincial/state levels in Canada and the US, meaning that FOI-related feral lawyering in Canada and the United States differs and fluctuates because of the variation in the mode of contact with FOI coordinators, fee estimate practices, and procedures for and responsiveness to appeals. In conclusion, we discuss the implications of our findings for methodological and sociolegal literature about FOI requests and for provincial/state FOI policies in both countries.

INTRODUCTION

The right to know about government practices is enshrined in freedom of information (FOI) legislation in over 100 countries (Birkinshaw 2010). Ackerman and Sandoval-Ballesteros (2006) describe this rise of FOI laws as an "explosion." These laws represent an "administrative legalization" (Epp 2000, 409) of transparency, accountability, and information sharing between citizens and governments. The global expansion of FOI legislation is significant for both administrative law specialists and for advocates of public transparency and accountability (Birkinshaw 2006).

FOI law empowers citizens to request government records not otherwise publicly available. Such records can include drafts of political speeches, policies, e-mails, presentation and briefing notes, raw statistical files, meeting minutes, incident reports, and more. Lee (2005), among others, has argued that FOI law should be used more for scholarly research since the documents disclosed through FOI mechanisms can reveal details about government practices unavailable through other sources (e.g., press releases, speeches, or websites).

Existing literature on FOI law and policy consists of two predominant strains. First, there are studies of FOI laws that report on legislative changes and legal precedents and tend to be doctrinal in character (Birkinshaw 2010; Relyea 2009; Ackerman and Sandoval-Ballesteros 2006; Halstuk and Chamberlin 2006; Snell 2000). Second, there is literature analyzing FOI disclosures in sociology, sociolegal studies, criminology, and political science (Sheaff 2016; Keen 1999). These studies report on the implications of

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FOI disclosures as a primary data source for theories and debates prominent in their disciplines. Yet despite a growing body of work on methodological aspects of FOI use (e.g., Savage and Hyde 2014), there exist few contributions about how to use FOI law in sociolegal research and the implications for understanding FOI law and policy, especially at subfederal levels.

We contribute to the methodological and policy literature on FOI mechanisms by comparing the process of "brokering access" in Canada and the United States, or the art of negotiating with FOI coordinators (Walby and Larsen 2012). FOI users learn about an agency through brokering access. The often lengthy negotiations between researchers and FOI coordinators involve bargaining, persuasion, intimidation, deception, and barriers. These legal and extralegal disputes (DeLand 2013) between FOI requesters and the public agency entail invoking law to gain or restrict access to information, contesting each party's claims, and resolving conflicts through creative means. By brokering, FOI users are doing more than just invoking a legal right; they are also navigating the "wild" complexities of legal argumentation, negotiation, precedence, and appeal.

We introduce the concepts of "law in the wild" (the wild legal regime) and "feral law" (practicing law in the wild), which we distinguish from professional or expert legal regimes and practices to highlight two aspects of FOI. First, influenced by the work of Callon, Lascoumes, and Barthe (2009) in social studies of science, we use the idea of law in the wild as an alternative to orthodox distinctions between lay (nonlawyer) and expert (lawyer) knowledge. Feral lawyers operate "in the wild" and therefore differ from professional lawyers, particularly in terms of the resources, training, and expertise they possess, but they share more in common than the classical distinction between lay and expert knowledge suggests. Similar to Callon, Lascoumes, and Barthe's (ibid., 104) analytical distinction between "researcher in the wild" and "secluded research," this reconceptualization of the researcher-citizen as feral lawyer rather than lay citizen "enables us to understand how actors who are not professional [lawyers] can nevertheless be integrated within the dynamic of [law]." Most researchers using FOI law are not lawyers, but in brokering they end up bargaining, arguing, and appealing in ways familiar to formally trained legal practitioners. The difference highlights how FOI law, intended as a citizen's right, can enlist lay citizens into processes of legal brokering for which they are ill trained or ill prepared and which most accounts of FOI law in Canada and the US ignore. Frequent FOI users may become less estranged from legal practices, but they still lack the specialized training, powers, and resources of professional lawyers, who tend to practice in a more "tamed" institutional field. Second, the distinction between feral and professional law illustrates the "wildness" of the FOI process and legal regimes and shows how key players in the field who are not typically hired legal professionals are forced to invoke legal knowledge in unpredictable ways.

In practice, there is a continuum of "wildness" upon which a set of situated FOI experiences can be placed rather than a categorical, either/or distinction. As we argue, attempted changes to FOI legal regimes, such as amendments to several US laws that require state agencies to absorb a greater portion of costs (thereby removing a key ground for negotiations) or attempts to normalize and encourage suing in the courts, are an effort to render FOI practices more professional than feral. However, we contend that the letter of the law does not solely determine the professional-wild continuum. Other factors, such as the players involved and the nature of informal interactions and of the requested information, are additionally capable of keeping FOI practices in the wild and outside the professional realm.

Our argument has three major implications. First, the distinction between feral and professional law, insofar as feral law is a kind of quasi-professional legal practice, stresses

a greater need for law and policy scholarship to explore those areas of law that escape the expert services and institutional arenas of formally trained legal professionals. FOI law in Canada and the United States, perhaps more than other fields of law, is an area in which lay citizens must familiarize themselves with complex laws, legal styles of argumentation and negotiation, and legal modes of dispute (including formal appeal). Rarely do FOI users receive formal training and education on how to use FOI laws in their own and other countries; they learn predominantly from experience, at times mimicking popular strategies of professional lawyers.

Second, implicit in our argument is a criticism of the oversimplified narrative of many governments that present FOI as a three-part process of asking (lay citizen invoking a legal right), reviewing (expert bureaucrat employing legal knowledge to assess a request), and disclosing or withholding (the product of the assessment). In a government culture that increasingly favors classification over disclosure (Galison 2004), users adopting the submissive role of lay citizen and trusting the presumed legal expertise of state bureaucrats are likely to acquire little of the precious information they seek. In this respect, feral law can be understood as a counternarrative to government discourses that frame FOI using an oversimplified lay/expert binary.

Third, our argument has methodological implications. FOI-related feral lawyering in Canada and the United States differs and fluctuates because of variation in contact with FOI coordinators, fees, and appeals. To be successful, FOI users must quickly learn to navigate these legal terrains, broker with state officials (sometimes lawyers), and appeal decisions. FOI users, particularly in large-scale comparative research involving multiple FOI laws and jurisdictions, must be attentive to not only the information and responses they receive but to *how they receive them*. As part of any academic research project using FOI, researchers should keep accounts of experiences of brokering and quasi-"lawyering" their way through the FOI legal wild.

As part of a comparative research project on paid duty and private sponsorship of public policing, we submitted FOI requests to over 100 Canadian police agencies in nine provinces and sixteen agencies in ten US states. In Canadian and US police departments, paid duty public policing entails uniformed public police being paid by private individuals and organizations to provide a visible presence at sport events, malls, night clubs, and other sites requiring security or traffic control (Lippert and Walby 2014). The other focus of the study, private sponsorship of police by corporations, intersects with paid duty and is part of the broader trend of police corporatization that we are studying. Here we assess how these police agencies approach FOI and manage information. Our analysis contributes to literature on FOI legal regimes (e.g., Roberts 2006) and to debates about sociolegal research methods (Watkins and Burton 2013). Savage and Hyde (2014) have called for more international and comparative use of FOI requests. We respond by comparing FOI experiences in Canada and the United States at the provincial/state (subfederal) level. While there is literature on US federal FOI law (e.g., Pozen 2005; Wells 2004), less is known about how FOI operates at the subfederal level in both countries.

First, we review the literature on FOI law in sociolegal studies. Second, we outline the methodological framework of our research. Third, to aid potential users of FOI laws, including sociolegal scholars, we describe and analyze the process of using FOI requests to study police agencies and consider some of the resulting methodological, empirical, and policy insights. Demonstrating the importance of comparative research design in studies of policing practices as well as FOI law, we contrast research experiences across Canadian and US jurisdictions and discern three major differences in provincial/state FOI laws. In conclusion, we discuss the implications of our findings for methodological

and sociolegal literature on FOI requests, for existing FOI policies in Canada and the United States, and for our "law in the wild" and "feral lawyering" framework.

FOI BROKERING AND LAW IN THE WILD IN COMPARATIVE PERSPECTIVE

Most literature comparing national FOI regimes focuses on legislative aspects and indicators of performance. A key part of this literature involves analyzing usage statistics for FOI laws, sometimes in comparative perspective. Glover et al. (2006), for example, examine usage statistics in the United States, Canada, and the United Kingdom. They report on issues of cost, exemption, backlogs, and other indicators of administrative efficiency (Holsen 2007). Holsen and Pasquier (2011) assess the operation of FOI laws in Germany and Switzerland. Other contributions have developed comparative measures for testing the efficacy of FOI regimes (Worthy 2013; Hazell, Bourke, and Worthy 2012; Hazell and Worthy 2010). Much of this literature explores FOI law's relationship to issues of transparency and accountability (Relly and Schwalbe 2016; Cuillier 2010; Peisakhin and Pinto 2010).

Assessing FOI laws comparatively and over time provides lessons about how FOI operates. Halstuk and Chamberlin (2006) assess changes to the federal Freedom of Information Act in the United States over four decades. They show how leaders in office influence the functioning of FOI law. Hazell (1989) provides one of the first comparative analyses of FOI law in Canada, Australia, and New Zealand. Ackerman and Sandoval-Ballesteros (2006) provide a global review of FOI laws, assessing differences in oversight (by FOI commissioners) and disclosure rates. They argue that FOI laws are "political creatures" (ibid., 115) because they are often rewritten when new political parties take office. Snell (2000) compares FOI laws in Australia and New Zealand, showing how varied FOI origins and agendas can be despite close geographic proximity and other similarities shared by neighboring governments. The differences include how legislation is interpreted, legal exemptions, oversight, and government and user expectations.

In more methodologically oriented discussions, scholars (e.g., Walby and Luscombe 2017; Jiwani and Krawchenko 2014; Savage and Hyde 2014; Walby and Larsen 2012) have elaborated how FOI requests can enhance social inquiry. Yet there is no guarantee that FOI researchers will receive full disclosure, making consistent use of FOI requests challenging for social science researchers (Monaghan 2015). Comparing provincial jurisdictions in Canada, Roberts (2000) suggests that FOI mechanisms have been eroding due to funding cuts and therefore that FOI law operates at a suboptimal level (see Roberts 2006, 1999). Roberts (2006, 86) also demonstrates that some FOI requests are subject to "amberlighting," in which ministers and other political managers are made aware of FOI requests submitted on certain topics and asked how to respond. Thus, there is direct political interference in the processing of some FOI requests depending on how politically sensitive the topic may be. Such political management of information results in "intractable secrecy" (ibid., 147) that threatens the functioning of FOI laws and contradicts government claims of greater openness and transparency (also see Arnold 2014). These barriers are not limited to Canada but exist in all jurisdictions with FOI laws (Worthy 2013; Hazell, Bourke, and Worthy 2012; Hazell and Worthy 2010). Katz (1969) long ago referred to these techniques, such as using stipulations in the legislation and other information management practices to conceal data and gain advantage in FOI disputes with citizens, as the games that bureaucrats play.

Monaghan (2015) categorizes four types of barriers in FOI brokering. The first barrier is political control of information. This includes the aforementioned "amberlighting" but also sections of FOI legislation that prevent access to cabinet and ministerial (i.e., executive branch) material or documents from other political managers. The second barrier is time delays and fees. This includes gross and arbitrary extensions and fees issued by agencies that are arbitrary and meant to prevent disclosure. The third barrier is lack of depth of disclosure and poor document retrieval. This issue is amplified by poor resource allocation to FOI coordinators in government agencies. The fourth barrier is redaction: FOI coordinators use sections of FOI legislation to justify blacking out portions of documents, barring disclosure of key material. An additional barrier is ineffective oversight. FOI commissioners and ombudspersons are understaffed and lack necessary investigate powers to resolve complaints or to hold public bodies accountable for FOI misconduct.

To complement the concept of brokering, we introduce the notion of "feral law," which connotes more than simple barriers to access. By conceptualizing FOI legal *regimes* as wild and FOI *practices* as feral law, we highlight three realities that official narratives on FOI in Canada and the United States tend to simplify or ignore. The first is the argumentative, negotiation-based nature of FOI. Similar to other ways of settling disputes by invoking law (DeLand 2013), the brokering process involves the requester and the FOI coordinator using legal knowledge of FOI legislation to contest each other's claims and decisions. Without knowledge of the dynamics of law and the content of the FOI legislation in a given jurisdiction, FOI users are likely to defer to the decisions of FOI coordinators, who aim to communicate their decisions in an expert and authoritative manner. During FOI disputes, all parties involved have an "interest in maintaining control over cooperation" (Callon and Rabeharisoa 2003, 193). By practicing FOI as feral law, FOI users learn to refute the decisions of FOI coordinators, call their bluffs, propose alternate legal interpretations, and otherwise broker access using whatever means necessary. In contrast to an FOI *request*, which conjures an image of politely and submissively asking for something, feral law reconfigures the field by leveling the relation between the FOI user and the agency in question. Rather than defer to the authority and expertise of FOI coordinators, FOI users in the wild apply experiential knowledge of law and legal bargaining to broker access to information.

The second aspect highlighted by feral law is the "wildness" and fluidity of FOI legal boundaries and law in action. Interpretations of FOI procedures vary within and across provincial and state boundaries. How one agency responds to the same request under the same regional law can be wildly different. Indeed, the same agency's response can also vary depending on the coordinator tasked with handling the file.

Finally, FOI law is wild in the unpredictability of its processes and outcomes. From how an agency responds to or interprets a request, to how well an FOI coordinator will accept a user's counterarguments, to the efficacy of appeals, FOI law in action is variable and irregular, requiring feral practices by FOI users. Below we provide methodological lessons for researchers as well as empirical insight into how FOI law varies within and between national jurisdictions.

METHODOLOGICAL FRAMEWORK

Our comparative research project uses FOI in combination with other methodological strategies to investigate the rationales for paid duty and private sponsorship of public policing in Canada and the United States, how these arrangements influence police work

and policy and private sector relations with police, and public controversies over these practices. Our interest in these two phenomena (paid duty and police sponsorship) and our project research design (comparative criminology) drew our attention to the two countries where these practices are the most prevalent: Canada and the United States. As we began to collect data on paid duty and sponsorship practices in these two countries through FOI, we encountered notable differences not only in the nature of the institutional practices we were studying (e.g., how paid duty police are hired by businesses) but also in how agencies were responding to and processing our requests for information.

Each province in Canada has FOI legislation that affords anyone the right to request access to information not yet publicly accessible. Canada has separate federal FOI legislation called the Access to Information Act, which took effect in 1983 before most provincial FOI legislation was introduced (it was not until 2010 that the final province, New Brunswick, enacted legislation). Each provincial law empowers users to request general records such as those pertaining to paid duty and private sponsorship. Police departments in Canada and the United States in our sample are subject to provincial and state-level FOI legislation, although some denied being subject to these laws (discussed below). We filed FOI requests in ten states plus Washington, DC. Four police departments in four northern states declined to respond to our requests. Similar to Canadian provinces, all fifty states plus the District of Columbia have their own FOI laws. The United States' federal FOI act was passed in 1966, much earlier than Canada's. State FOI laws in action vary by response rate, fees, appeal processes, and overall efficacy. Most state FOI laws allow anyone to request information, but some only apply to US citizens (e.g., Pennsylvania). These structural differences between FOI law in Canada and the United States provide a basis for the comparative case design. The differences in the two countries are expected to create variation in outcomes as well as variation in how FOI users broker access, the details of which we report on below.

We filed FOI requests with ninety police departments in Canada and sixteen in the United States. As it is the largest province, most Canadian departments were in Ontario. While we covered municipal/city police departments in all of English Canada's provinces, aiming for a representative sample comprising various department sizes and locations, due to limited funding we could focus only on several key US city police departments of varied sizes and in different states to maximize variation. We therefore cannot generalize our experiences across the United States, but the limited comparisons are still insightful. Our study also has two further limitations. First, we did not conduct FOI requests with state or federal police departments in Canada and the United States (the subjects of federal FOI law) and so cannot reflect on differences between federal and subfederal FOI laws. Second, because our focus was on the FOI brokering process and agency responses, we do not consider how FOI outcomes may have been shaped by specific media coverage and/or controversies in each city.

We filed two FOI requests with each police department with a restricted timeline of January 2012 to November 2015. We first asked agencies to disclose paid duty policies and users of their paid duty services. The second request concerned private sponsorship. We asked departments in receipt of outside sponsorships to release relevant internal policies and to list private entities that had sponsored or donated to the agency. In both countries, response times varied between three weeks and six months, and sometimes no response was received. To frame the wording of request letters, we searched online for department-specific terminology used to refer to paid duty and private sponsorship practices. Regarding the first, "paid duty," "special duty," and "call-outs" were popular in Canada. In the United States, the preferred terms were "paid detail" and "secondary employment," although other terms such as "buy-back policing" and "voluntary special work" were

also used. We refer to these practices collectively as *paid duty*. Sponsorship data from police departments usually contained files pertaining to sponsorship and/or donations from private companies to the police in the form of money, services, or products. When agencies were not open to negotiations and either closed requests or denied access, we filed fee waivers and complaints with provincial information and privacy commissioners and US equivalents.

We recorded our experiences by making notes after conversations with FOI coordinators, privacy commissioners, and other agency officials. We documented observations as well as personal and emotional reactions. We also analyzed e-mail communications and the formal written responses of each agency. Although we had never sought access to these particular types of files before, we had used FOI for past research projects. What is unique about this study is the large number of agencies from which we requested files, our documentation of their responses, and our use of a comparative method. Our experiences reveal differences in how police agencies store, prepare, and disclose information in municipal and provincial/state jurisdictions across Canada and in select cities in the United States, providing a comparative perspective on the feral practical and legal challenges of using FOI.

BROKERING ACCESS BEYOND THE BORDER: AN INTERNATIONAL COMPARISON

FORMAL VERSUS INFORMAL CONTACT

The first characteristic of the FOI wild is variation in the mode of contact used by agency coordinators tasked with handling FOI requests. How coordinators chose to respond to our requests enabled and constrained the response tactics we were able to use as feral lawyers. FOI coordinators from Canadian police departments responded to requests by formal letter and informal contact. The purpose of the formal response letter was to acknowledge receipt of the request, state the expected timeline for its completion, and provide the contact information of the official overseeing it. Formal response letters were generally followed by an informal e-mail or phone call from the coordinator seeking clarification regarding the wording of the request. Our experience was that "clarification" was often a code word for negotiating the request's scope to reduce coordinators' workload. At other times, these informal communications put pressure on us to abandon our requests because of high fee estimates. Navigating these games that bureaucrats play (Katz 1969) can be challenging, but it is a crucial aspect of practicing FOI as feral law. Rather than trust at face value the authority and expertise of FOI coordinators, who seek to close the transaction by presenting their knowledge and decisions as unchallengeable, FOI users as feral lawyers must approach these informal communications cautiously and be critical of the rationales offered by the civil servants with whom they are negotiating.

FOI coordinators in Canada also used informal contacts to assess the risks associated with disclosure by asking about our intentions. This practice, of probing our planned use and potential interpretation of a disclosure, is not embodied in FOI laws in Canada or the United States but nonetheless was commonplace in the Canadian FOI wild. The FOI wild is such that not all practices, even some common ones, are sanctioned by law or even necessarily legal. As one police official wrote by e-mail, "I am in receipt of your request ... May I please enquire as to the reason of your request i.e. a study or report?" We would respond that the information was for an academic research project on paid duty and private sponsorship of policing. This vague answer was usually sufficient to satisfy FOI coordinators. Another strategy, used in the study's later phases, was to convince FOI

coordinators of the low risks of releasing requested information by informing them that other agencies in their province had already released similar information to us. On occasion this would involve sending them disclosures from other departments as proof. We found that FOI coordinators were often keen to review the disclosures of other agencies, particularly disclosures from the same province and local region. This may be evidence of a kind of isomorphism (DiMaggio and Powell 1983) in the wilderness of FOI management practices, where agencies that are typically disjointed are more willing to share information if other similar organizations have already done so.

Many Canadian police departments with which we filed FOI requests were without the large internal FOI offices found in major city police departments. In these smaller jurisdictions, different feral lawyering tactics were required because the police departments had little to no legal training on FOI and sometimes did not know what FOI law was. As FOI lawyers, we had to invoke our legal rights and educate these agencies on FOI's democratic significance and legal requirements. Several small departments called to ask on what legal grounds we assumed we had the right to access the requested information. Other small departments called to express confusion or annoyance over why they had received our FOI request. A representative of a small police department even suggested our request was "frivolous" and was intended to reduce the efficacy of police agencies.

The preceding findings differ from our experiences with FOI laws in the United States. The US agencies we filed requests with were less likely to use informal negotiating as a tactic for information management. We found that informal interactions with FOI coordinators in the United States were less common. This necessitated a shift in feral lawyer tactics. When FOI coordinators in the United States contacted us, we did not experience the same style of negotiating. The exception was one major city in a large southern state. The FOI coordinator called several times to talk about the available information and, because of the sheer amount of data involved (thousands of pages), about ways to reduce the request to render it more manageable. This FOI coordinator, although willing to release all information, recognized that it was in neither of our interests. On the one hand, it would be considerable work for the FOI coordinator to prepare the information; on the other hand, we could not reasonably analyze thousands of pages of records on a single department. Additionally, we were told, we would have to pay for these records unless we reduced the scope. The FOI coordinator appeared honest about the available information held by the department and consulted with information technology specialists to see what kinds of disclosure formats were possible.

Police agencies in the United States usually responded with one letter acknowledging receipt and another containing the final decision. In doing so, FOI coordinators in the United States exercised a strong, less negotiable art of FOI decision making, acting more like judges than lawyers in the transaction. Unlike in Canada, informal contact and questions about why we were requesting the information were rare. Only two agencies asked these questions, and both were state university police departments. Even then, their questions seemed less about assessing risk, as in Canada, and more about genuine interest in the project, perhaps because neither university department engaged in the practices we were studying and thus had no records to disclose. In addition, we found that some systems were automated. From one southern US police department, all communications and updates regarding our request occurred through an automated system that notified us through e-mail and allowed us to communicate with police and city officials through an online chat function.

NEGOTIATING REQUEST SCOPE AND FEES

Negotiations over request scope and fee estimate practices were another source of wild variation across state, provincial, and national FOI legal regimes and an enabling and constraining factor on our choice of feral lawyering tactics. It was normal to be charged fees for our initial FOI requests in Canada. Every province had its own fee requirements associated with making an initial request. Public bodies in Ontario, Nova Scotia, and Prince Edward Island required a $5.00 CDN initial request fee, while agencies in Alberta required a $25.00 CDN payment (sometimes for each item requested). The remaining provinces had no initial request fee.

Once a request file is opened, public agencies in Canada can charge for FOI requests depending on the information requested (e.g., personal versus general information), the format (e.g., hardcopy versus electronic), and the total financial cost to the agency for locating, copying, formatting, and/or redacting documents for release. High fee estimates were common from Ontario police departments, but the highest fee estimates we received were from departments elsewhere in the country (upwards of $2,300 CDN).

The first reason cited for issuing fees in Canada was the nature of the information. FOI coordinators argued that the requested information, in particular lists of paid duty users and sponsors, justified a fee. As one FOI coordinator stated in a telephone call, "Because the request does not fall into the public interest, an hourly fee will have to be charged." FOI coordinators argued that the request was esoteric insofar as the information's relevance to the public was not obvious. The fact that other agencies, sometimes in the same province, thought the information *was* in the public interest highlights the wild variability of FOI as feral law. The second reason for issuing fees was search and retrieval time. Many departments claimed that the lists of users and sponsors were not stored as a single assignment log. We were told repeatedly that independent records for each user/sponsor were stored with other documents in boxes requiring manual sifting. Other departments complained about being understaffed, having outdated computer systems, and having limited expertise in information technology. One department claimed that there were so many boxes of records that they would have to hire additional staff to respond to our request. Finally, the third main reason for issuing fees concerned the work to prepare the documents for release. The tasks of removing officers' names in departments where user/sponsor confidentiality agreements or expectations of privacy were in effect and contacting each user/sponsor for permission to disclose third-party information were particular sources of concern.

We encountered two types of fee estimates from Canadian police departments. The first, most common type, which we usually paid and considered to be in good faith, entailed the cost of the coordinator's initial search for relevant files and the production of a detailed estimate based on their sample findings. These FOI coordinators generally knew the type of information with which they would be working and what was required to prepare it for disclosure (e.g., retrieval, redaction, and digitization). A second type involved FOI coordinators presenting us with abnormally high fee estimates, ranging from the low hundreds to thousands of CDN dollars, of which we had to pay 50 percent before the request would be processed. One FOI coordinator declared by telephone, "From reading it, this could cost a few thousand dollars. I'm not sure if your research project has those kinds of funds or …" Some FOI coordinators, making vague claims about hundreds of boxes of documentation requiring manual sifting, claimed that they could not search for records until half the fee was paid. Sometimes these high fee estimates could be remedied only by reducing the time frame covered. In one exceptional example of feral law, we convinced the FOI

coordinator to reduce the estimate to align with other Canadian police departments (which involved sharing example disclosures).

In other cases, reducing our time frame turned out to be futile, which suggested to us that such fee estimates were primarily a strategy to block access. Using fees in this way is technically illegal according to FOI law, but the lack of strong oversight and enforcement mechanisms and the unlikelihood of users suing in Canada means this strategy is common in the wild of FOI. For example, one small department initially quoted $510.00 CDN for a request for paid duty user logs and policies. When we reduced the time period from three years to three months, and after several persistent efforts to contact them (they claimed our e-mails had been lost in the junk mail box), we received a new fee estimate of $360.00 CDN (only $150 CDN less, despite requesting, based on a drastically reduced time frame, less than *one-tenth* the information). After asking the FOI coordinator why the fee estimate had not decreased more significantly, we were told over e-mail, "This is an estimate. It could possibly be less, however it could also be higher. Without actually going to the work of pulling all of the documentation, I am not sure at this time how many parties are affected by your request." The notion that the fee estimate could be "lower" or "higher" failed to justify both the second estimate of $360.00 and the earlier estimate of $510.00 CDN. We received a similarly high initial quote and revised estimate from this agency for private sponsor lists and policies (from $270.00 to $240.00 CDN after significantly reducing the time frame). Given the cost precedent set by other police agencies doing similar work and the small size of this agency, our sense was that these fee estimates were not being calculated in good faith. Such variation across the departments providing this second type of fee estimate in response to the *same initial request* epitomizes the wildness of FOI legal regimes and practices of feral law. There is little objectivity in how these agencies use FOI law to manage information. The wildness of FOI law is such that each dispute between a user and an FOI coordinator can result in radically different results.

It was rare for US police departments in these states to charge a fee, either for the initial request or for processing it. This is another major difference that the feral lawyer should keep in mind. Only one department we filed a request with in a populous western state required an initial payment of $5.00 US. This agency returned the fee after determining it was unnecessary for the information requested. One department in a southern state required a small payment of $19.20 US. Although several police departments requested fees, this was a formality or, in some circumstances, seemed to be used to encourage us to accept information in their preferred format. As a formality, US FOI coordinators would inform us that they would consider our request but that high fees were possible. One southern department indicated a possible large fee for processing the request: "Please be advised that this will require much research, as it is not information that is kept in a central location. If this research is performed, it will require a cost estimate prior to beginning the project." In the end, this department released a compact disc (CD) with all requested information without a fee. This contrasts with our Canadian experiences, in which FOI coordinators used high fee expectations to encourage us to reduce the scope or time period of requests or to abandon them entirely. In an apparent attempt to encourage us to accept information in their preferred format, two southern departments explained that we could either take the information in one format or pay a high fee for alternative preparations. Here high fees were used less explicitly to block access (as in Canada) but were still significant as part of their bargaining offers. One of these same southern police departments mirrored practices of professional law by using the potential for an "extensive prepayment" as a bargaining chip in negotiations:

> [O]ur data is not compiled in the requested format. We have a list of "active" customers who have requested extra duty officers but [that] does not mean that they utilized our services during your requested time frame. Also, if they've since been inactivated, those would not be on the list but may have benefitted from our services during the requested time frame. The only way would be to access each company individually to confirm if they were active during that time frame and the list has more than 900 customers and would require an extensive prepayment for our time to research. . . . Please let me know if the list of active customers is sufficient, keeping in mind that it may not be during your requested time frame that our services were provided to each.

Preferring not to pay a fee, we took the information in the offered format. In the language of professional law, *we settled*.

One possible explanation for the lower frequency of payments in the United States is the larger size of police departments in our limited, nonrepresentative US sample. Most US police agencies with which we filed FOI requests were large city forces with more resources and large FOI units. In many police departments in Canada, FOI units were smaller and had fewer resources. Some police agencies were without FOI units, requiring certain administrative staff to double as FOI coordinators despite lacking the required expertise.

A second explanation lies in the differences between provincial and US state laws, the resulting administrative culture of FOI, and its differential effects for the FOI wild between (and within) these two countries. In Canada, the right of public bodies to charge requesting entities for search and preparation times associated with FOI requests is enshrined in provincial FOI legislation. This has not only normalized the practice of making requesters pay for FOI requests, even when requests are small like ours, but has resulted in the regular issuing of high fee estimates by FOI coordinators in Canada as a strategy for reducing workload and blocking access. This contrasts with our experience in the United States, where some states have incorporated into their constitutions the right of public access to government records and the responsibility of local governments to subsume the costs for access in full. In Minnesota, under the Minnesota Government Data Practices Act, for example, all government information is presumed public until proven otherwise. Public bodies in Minnesota can under certain circumstances charge a "reasonable fee" for copying, search, and retrieval of documentation. But state law in Minnesota does not allow public agencies to charge for redacting information. When a request produces less than 100 pages of black and white hardcopy material, as our requests did, a public body in Minnesota can only charge for copying at a rate of $0.25 US per page but not for actual costs of search and retrieval (but see below for other limitations of Minnesota FOI law). Under the Texas Public Information Act, public agencies can only charge for disclosures that produce more than fifty pages of information. Labor costs in Texas are set at $15.00 US per hour for searching, retrieving, and preparing documents for release, compared to $15.00 CDN per *half* hour in most provinces in Canada. Under the Washington Public Records Act, public agencies are permitted to charge fees associated with copying records but are prohibited from charging for search time in locating a record or for time spent preparing it for public inspection. The Michigan Freedom of Information Act stipulates that public bodies may charge a fee for searching and preparing a request for disclosure at the rate of the lowest paid employee in the agency. Apart from copying fees, under Michigan law, search and preparation fees are only supposed to apply to requests that would result in "unreasonably high costs" to the agency. Recent changes to the Michigan Freedom of Information Act have capped copying fees at $0.10 US per page, boosted fines for delays in response, and now allow requesters to sue public bodies when they feel they have been overcharged for a disclosure (Wisely 2015). One

could argue that changes to the FOI legal regime in Michigan are an effort to render it more "professional" by placing a stronger emphasis on the use of courts to settle FOI disputes. On the other hand, we argue that changes to law alone are not enough to tame the "ferality" of FOI legal practices. Other factors, such as the players involved or the information at stake, can keep FOI negotiations in the wild.

These sections of state law do not entail an incapacity or unwillingness of public bodies in these states to charge for information. Public agencies in the United States have been known to use high fee estimates and other barriers in ways similar to those we experienced in Canada (e.g., Grube 2013). Regarding fees, however, there is a notable difference between provincial and state FOI laws within our sample. In some states such as California there was a clear obligation on behalf of public agencies to absorb the costs associated with our requests. Many public agencies with which we filed requests in the United States were restricted in their ability to charge us fees given the limited timeline and scope of our requests. On average our requests produced no more than fifty pages of information depending on the size of the agency. This contrasts with Canada, where our modest requests sometimes resulted in estimates of fees in the thousands of Canadian dollars.

In Canada, provincial FOI laws are not as stringent about fees, leaving it to the discretion of the FOI coordinator. Under Canadian FOI law, FOI coordinators enjoy a much greater degree of freedom over when and how they invoke fee requirements. Even when requests are small, as ours were, FOI coordinators in Canada can opt to charge the requester for every minute of work involved in processing the disclosure. We paid as much as $36.16 CDN for a third of a page of information. Section five of the Ontario Municipal Freedom of Information and Protection of Privacy Act lays out a set of exhaustive reasons an agency may choose to charge a requester:

> (a) the costs of every hour of manual search required to locate a record; (b) the costs of preparing the record for disclosure; (c) computer and other costs incurred in locating, retrieving, processing and copying a record; (d) shipping costs; and (e) any other costs incurred in responding to a request for access to a record.

Based on these considerations, FOI coordinators in Ontario are allowed to provide the requester with a "reasonable estimate of any amount" that, when exceeding $25.00 CDN, the user must pay in full before the information is released (or often half to demonstrate "good faith"). Broad and permissive procedures similar to those in Ontario can be found in all Canadian provincial FOI laws, with some minor exceptions (e.g., British Columbia's FOI Act stipulates that the first three hours of search and retrieval are free and that public bodies cannot charge for severing information from records). Within these provincial laws, nowhere are public bodies required or encouraged to avoid charging fees or to keep them low. The only consistent rule across these provincial FOI acts, which is also articulated in most US state laws, is that the fees agencies charge (although usually in the form of an estimate) cannot exceed the "actual costs" incurred by the agency.

APPEALING OUTCOMES

The final source of variation was in how agencies viewed the sensitivity of the requested information and whether we had to appeal their decisions as a result. Appealing was not always a straightforward process. It involved different procedures in different subfederal jurisdictions in Canada and the United States. The fact that some agencies responded positively to less formal appeals permitted us to try a wider

range of creative strategies as feral lawyers, strategies (such as bluffing) which again were not necessarily embodied in the law or promoted in official discourses on FOI. The outcomes of our FOI requests with Canadian police agencies varied, evincing crucial differences—both municipal and provincial—in how departments viewed the disclosure of the requested information. In reference to paid duty and sponsorship policies, agencies generally released them or informed us that none existed. Requests for lists of paid duty users and private sponsors, however, generated a wider array of responses and were treated as more sensitive than requests concerning the policies themselves. First, citing concerns about "third party privacy," some police departments claimed they would need consent from every listed user/sponsor. Others merely removed individual user/sponsor names but left company and event names, while others saw no privacy issue in releasing the information (sometimes even releasing officer names). Negotiating these queries and assertions is part of access brokering and represents an effort to tame the wild variation encountered in interpretation of FOI law.

A second and less common response was that no such records existed. As one agency wrote, "The decision has been made to deny the records you requested as no such record exists." However, practicing the caution and skepticism characteristic of feral law, sometimes we would call these agencies to probe this outcome. In several cases following a response that no records existed, FOI coordinators would indicate that their police forces did engage in paid duty but that they were bereft of the user logs described in our request. Revealing the slyness of the initial response, a representative of the department quoted above remarked on the telephone that "the records do exist—there just aren't any logs, per se." By taking advantage of interpretive leeway in FOI law and request wording and providing minimal explanation upfront, FOI coordinators seek to block access and deter future requests on a given subject.

As noted above, one police department initially rejected our FOI request because it was deemed "frivolous or vexatious." The chief of police and FOI coordinator were of the

> opinion that the request was instigated in bad faith … police services across the province have received the same or similar requests from you. My opinion is that your rationale for requesting this information is not for access but to bog down police services in handling Freedom of Information requests and to bog down the Information and Privacy Office with any subsequent appeals.

After calling this agency to discuss their unusual response, this FOI coordinator agreed to disclose the records with a reduced time frame after being informed that other agencies were disclosing the records. Although an extreme case, the outcome demonstrates the fluid, shifting context of FOI as feral law and the power of FOI users in the wild to change outcomes through quasilegal bargaining and argumentation.

A police agency in another province argued that while they understood our request, the information was not in the public interest and therefore could not be disclosed. As the FOI coordinator communicated over e-mail:

> I understand what you are asking for, however, that is not information that we will be providing and is not in the public interest …. If the … Police were to hire an outside company to provide a service … we would release that information as it would be the taxpayers' right to know where the money is going. However, when we are hired by another organization/company to provide a service for them (on a cost recovery basis only), it is not our place to release information on the specifics of that organization and how they spend their money. As a public body, not only do we release information, we also have a responsibility to protect the personal information of individuals and private companies.

Yet the legal duty to assist requires this department to also contact third parties and seek their permission to release information when there is concern. This province's particular FOI act clearly states that the disclosure of third-party information is not considered an unreasonable breach of privacy if "(a) the third party has, in writing, consented to or requested the disclosure." The inappropriateness of this agency's rationale is compounded by the fact that it contrasts with the precedent set by most police departments in our sample. It became clear that withholding information had less to do with the letter of FOI law and more with keeping the agency's practices hidden and/or reducing agency workload.[1]

Police departments in the two smaller provinces were particularly reluctant to comply with FOI law. A police chief from one of these provinces incredulously called us to indicate he would not fomally respond to our FOI request: "I am not going to respond to this letter formally but just wanted to give you a call to let you know why I'm not going to respond to it." Another chief of police from this province telephoned and was more direct: "We do not do FOI," he said before hanging up. In the other province, a police chief explained why police agencies are (oddly enough) not public bodies under provincial FOI legislation:

> I would direct you [sic] attention to section 1 (k) of the Provincial [Act] ... which defines a "public body"... [this department] is not a define [sic] entity as described in section 1 (k) (i)–(iv) nor are we as an organization defined as such an entity in the General Regulations. As such there is no requirement for this service to meet the disclosure requirements and supply any of the information as requested.

Another police agency from this same province wrote,

> Please be advised that municipalities ... do not have to conform with requests such as yours. I'm sorry, but I'm not going to provide you with the information requested ... the information that you're requesting is very sensitive and could be a release that could possibly cause officer safety-related issues.

This police service was the only agency in our sample to cite officer safety as a reason to deny access to records, again showing the variety of styles of argument and interpretation users face in the wild of FOI.

In response to negative outcomes, we filed fee waiver requests and appeals with provincial information and privacy commissioners (IPCs). We were successful with one fee waiver request. To file a fee waiver request, necessitating a reduction or waiving of estimated fees, the user must explain the rationale for the request by citing relevant FOI legislation, making public interest arguments, and appealing to financial need. We argued that the information we were seeking was in the public interest and that the available budget for our research limited the amount we could spend on FOI processing fees. One police department reduced the fee estimate from $227.00 to $47.00 CDN based on our request. Another department in the same province, however, rejected our fee waiver request, which we worded similarly. This department's FOI office manager wrote with minimal explanation or evidence for rebuttal: "I do not feel your argument is very strong for a public health and safety/compelling public interest consideration. There is no convincing evidence." Such a response demonstrates that the onus is on FOI users, who must convince the agency to reduce the fees, and that the grounds for these stalls are not predictable. We filed a complaint against this agency with the IPC in that province, and the complaint is still in process months later. All this brokering is part of how users and receivers of FOI requests settle disputes by invoking law in unpredictable ways (DeLand

2013) to seek an upper hand in contesting claims, decisions, and outcomes comprising FOI processes.

We encountered more evidence of feral practices in the finding that some US agencies did not follow (as strictly as Canada's police departments) the requirement to provide a legal justification for withholding records or instructions on how to appeal. From a police department in a northern state we received a one line e-mail: "Policy attached, Off Duty Employment logs/assignments are not public information." We responded to this e-mail seeking further explanation but did not receive a reply. A police department in a large southern state sent us a CD with electronic copies of select records. They sent us all iterations of their secondary employment policies over the three-year timeline but ignored the parts of the request about lists of secondary employment users and private sponsors. They did not provide any written response or explanation with this CD. A police department in a western state sent us a redacted document that not only lacked our requested information but also held no mention of the reasons why this information was withheld and under what section(s) of the state legislation. No disclosures were accompanied by instructions on how to appeal the agency's decision. Conversely, in Canada it is commonplace for public bodies to close FOI requests with a final response letter citing sections of FOI legislation justifying redactions or the withholding of records and providing instructions on how to appeal a decision. When charging fees, many departments in Canada also provided instructions on how to request a fee waiver in their response. Often it was unclear which US official had handled the request, whereas in Canada it was common to receive a letter stating the contact information for the coordinator responsible. Here again the feral lawyer must be aware of this variation and respond with different tactics. The lack of explanation and instruction provided by police departments in these states required us to consider additional courses of action such as appeals. To discern this, we had to locate FOI legislation for each state and track down relevant offices. We also consulted third-party resources such as the Open Government Guides from the Reporters Committee for Freedom of the Press website (https://www.rcfp.org/open-government-guide).

We filed FOI complaints in a western and a northern state. Although the right to request a fee waiver is enshrined in many state FOI laws, this was unnecessary because there were no high fee charges as in Canada. In one of these states, the appeals process was similar to the one in Canada. To appeal, FOI users in this western state are required to submit a petition to a designated state office. Much like in Canada, the petition must state the reasons they find the public body's handling of the disclosure unsatisfactory and provide copies of the records released and the agency's response. We received an e-mail from the designated office one week after submitting the petition by mail. The official tasked with our file did not believe that we had grounds for a petition but agreed to contact the police department anyway. One week later we received an e-mail from the police department with a revised response to our request and the requested records:

> The [department] interpreted your request for secondary employment logs pertaining to types of duties, generally. We now believe we understand based on your appeal … that you are seeking the names of the companies/events. We will provide that information along with the date the secondary employment request was made, and the expiration date.

In the other state, after receiving the one-line response from the police department quoted above ("Policy attached, Off Duty Employment logs/assignments are not public information"), we filed for an advisory opinion from the designated office—the equivalent of a privacy complaint in Canada. Several weeks after filing the request for an

advisory opinion, we received a phone call from an official at the designated office. The official explained that their office wanted us to revise and resubmit our request before seeking an advisory opinion. In the phone conversation, the official counseled us on specific ways to improve our request wording in order to increase our chances of getting a disclosure under the state FOI law. The following is an excerpt from our notes on the conversation:

> On January 26, 2016 I received a call from the state's designated office overseeing appeals. The person I spoke with opened by explaining that: "It's not necessarily going to be as easy to get the data as it might be in other states. First I want to tell you that I'm not going to go forward with the complaint just yet because I want you to try to resubmit your request first .... The problem, as the response from the police department stated, is that logs are not public information .... Logs have officers' names on them, and this is private information." I explained that other states and provinces in Canada had usually just redacted this information prior to release. I asked if it was not the case in that state that the police department could just remove the officers' names before disclosing the records. She replied: "They could, but don't have to." She counseled us to resubmit our request but this time specify that we want to know the names of events, organizations, etc. that hired officers, but do not want to know officers' names. This would pressure them to release the information in another format. She then stated: "As for item three in your request [regarding private sponsorship policies and names of sponsors], this I think should be public information, so I think you just need to resubmit it to the agency. I see no reason why they cannot release that." She told me I should resubmit the request by email to [city official] who is the main data practices contact for the [city police department I was interested in]. She told me I should CC her in the new request because "sometimes this seems to help, I don't know why."

Three developments emerged from this conversation. First, we obtained contact information for the FOI unit head for this police department. We were told to resubmit our request to this official. Second, in revising and resubmitting this request, we were told we could copy this particular official in the e-mail as an added impetus for the police department to handle the request properly. Third, we were informed about a tricky element of this state's FOI act: public bodies can compile the requested information for release, assuming it is open to public disclosure, but are not required to remove private information from records as in some Canadian provinces and US states. The requested information was public, but the particular format was not. In response to our revised request, the department released all information we sought.

Perhaps most exemplary of feral law, we were compelled to use the strategy of litigation warnings (even though we were unlikely to pursue this in light of the potential high cost and unpredictability) to obtain information from a city police department in a northwestern state. The records analyst responded to our initial request by denying access to all records. Their response letter identified the court in which we could file our complaint. We responded by calling the analyst and asking for the supervisor, who turned out to be an assistant city attorney. We told the assistant city attorney we would be willing to litigate to obtain these records—knowing, of course, that court proceedings can be costly and time consuming (Yeager 2006). Upon hearing this news, and after consulting city attorneys, the assistant city attorney decided to grant near complete access. This not only shows how US government agencies use the "go ahead, sue us" approach to initially deny access, perhaps especially with FOI users from outside the United States, but also that, in true "feral lawyer" fashion, researchers are also sometimes forced to threaten litigation as a tactic to gain the upper hand in FOI negotiations.

DISCUSSION

FOI law varies by jurisdiction, by agency, and even by FOI coordinator. Practicing feral law in comparative scope can illuminate the variable, unpredictable space that is FOI. In Canada, the disputes were rooted in negotiations about excessive costs; for us, a successful request involved coming away with paying as little as possible for the maximum useable information. There was little or no invocation during these negotiations of grand notions of entrenched citizen rights to the information and how this information might facilitate government transparency, accountability, and democracy. In the rare instances when appeals to these grand notions were made in conversations, they were generally ignored, with FOI coordinators preferring to keep discussions about FOI disclosure rooted in a more technical discourse about bureaucratic procedures, workload, record formats, and cost provisions. In the United States, we experienced more of an all-or-nothing arrangement, with bigger risks should the agency decide to wholly refuse to provide the requested information and with the threat of litigation looming like a dark storm on the horizon of the FOI wilderness.

Regarding the methodological implications for FOI law and policy research, comparing FOI experiences in Canada and the United States has revealed three major differences in these two countries. First, informal brokering, which in Canada involved FOI coordinators affirming the requester's meaning, negotiating the request's scope, or assessing the risk of releasing the information by asking why it was needed, was less frequent in the United States. While our institutional position in Canada no doubt influenced how US agencies responded to our requests, future research with a larger US sample size is needed to assess whether this was only a trait of the states and departments where we filed requests or whether it can be generalized. When US FOI coordinators contacted us, it was to inform us of limits in the way information was stored by the agency and to clarify exactly what kind of information was being requested. Most FOI requests in the United States began with a note acknowledging receipt of the request followed by the final decision, but they rarely included informal communications by phone or e-mail. The lack of informal negotiating had both positive and negative methodological consequences. It meant that we were less likely to reduce the scope of requests for data by succumbing to the informal claims of FOI coordinators that requests would come with high fees and other off-the-record attempts to pressure abandonment or revision of our requests. However, it meant we were unable to clarify the meaning of requests with FOI coordinators, resulting in several misinterpretations on the part of US police departments. On several occasions, we had to refile our requests because the agency had not provided the requested information. Regarding policy implications, US FOI law and policy should include provisions for the "duty to assist" found in Canadian access regimes. The powers of FOI commissioners and ombudspersons should be strengthened to supersede agencies that diverge wildly from the letter of FOI law.

Second, we found that costs associated with processing FOI requests were less common in the United States. We received fee estimates on occasion, but ultimately we avoided payment. This contrasted with our Canadian experience, where fee estimates were surprisingly common and high fee estimates were used to block access. Although future research is needed, we argue that this difference is at least partially attributable to variation in the spirit and letter of FOI laws in these states and provinces. In the United States, many state laws we filed requests under made it more difficult for officials to charge for search and preparatory work. Rules around fee charges have long been a focus of legal debates about US state FOI laws. This has resulted in many states passing amendments that place a minimum threshold on when agencies can charge users for FOI requests

(Grube 2013). In part because of these differences, our experiences of FOI feral law and the brokering strategies we used in the two countries differed. In Canada, legal tenets surrounding fees were more permissive, leaving it to the discretion of public bodies whether or not to charge a fee. Regarding policy implications, in Canada we recommend clearer, less permissive instructions about cost for FOI coordinators in every province. Such instructions ought to reduce the variability between public bodies and inhibit the potential to use costs to block disclosure.

Third, we found that US police agencies in our sample were less likely to provide formal response letters containing legal explanations for withholding or redacting information and instructions for appealing the decision. Given US culture, well known to be more litigious than Canada's, the other possibility is that expensive litigation (Yeager 2006) is the main recourse in many jurisdictions, and those police agencies reluctant to release what they deem to be sensitive information may prefer to dismiss requests when it is imagined that requesters will be unable to litigate to challenge this decision. In other words, they prefer to stay in the wild rather than be tamed by the courts. Our policy recommendation is that, although there are third-party resources available to inform new requesters of data rights, public agencies in the United States should proactively inform requesters of their rights of appeal, especially since procedures differ by state.

CONCLUSION

Contrary to official narratives, which depict FOI as a straightforward process of formally and politely asking, to practice FOI effectively users must mimic the practices of professional lawyers. Practicing FOI as "feral law" varies by jurisdiction and demands that users understand FOI laws, styles of legal argumentation, and avenues for appeal. It also demands that FOI users be bold and creative in their strategies and methods of negotiation. Such demands are amplified when researchers use FOI in multiple national and international jurisdictions. Given that most literature on FOI examines federal law and policy, our examination of how state and provincial FOI law is used provides a unique empirical contribution with numerous implications.

Regarding conceptual contributions, our findings have implications for theorizing FOI law and brokering processes. FOI laws and access cultures vary within and between countries, leaving it up to researchers to equip themselves to navigate each new legal terrain—terrains that tend to be uncontrolled rather than tamed legal spaces. Efforts can be made to render an FOI legal regime more "professional," such as through changes to law, but ultimately we contend that the wildness of an FOI brokering experience is not reducible to the letter of law and policy alone. Other factors, such as the agency, the FOI coordinator involved, the resources available, or the information being requested, can shift an FOI brokering experience more to the "wild" and "feral" zone of the conceptual continuum. To the extent that these feral legal processes mimic the bargaining, argumentation, and appeal strategies of lawyers, FOI brokering can be conceptualized as feral law. The goal of conceptualizing FOI brokering in this way is to shrink the gap assumed between professional practitioners of law and users of FOI while retaining awareness of their differences. Law in the wild, which denotes the legal regime rather than the practice, refers to uncertain, unruly legal contexts with vague boundaries. In the FOI wild, even where law is deemed not to apply, FOI users still receive, for example, calls from police chiefs dismissing their requests, perhaps because these officials think their practices might still lie within FOI law's ill-defined shadow. Although different from professional or "secluded law," experiences of feral law have much to offer FOI scholarship and sociolegal studies

more broadly. Our experiences using subfederal FOI laws in Canada and the United States exhibit key differences in how police departments store, prepare, and disclose information at municipal and provincial/state levels as well as differences in how these agencies respond to counterarguments and other strategies of negotiation such as sharing documentation, establishing rapport, and bluffing.

NOTE

1. This rationale did not withstand formal appeal. We filed a complaint against this agency with the British Columbia Information and Privacy Commissioner. Within weeks of filing the appeal, the department responded to us directly with a revised decision and disclosed the information.

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REFERENCES

Ackerman, John M., and Irma E. Sandoval-Ballesteros. 2006. "The Global Explosion of Freedom of Information Laws," *Administrative Law Review* 58: 85–130.

Arnold, Jason R. 2014. *Secrecy in the Sunshine Era: the Promise and Failures of U.S. Open Government Laws*. Witchita: Univ. Press of Kansas

Birkinshaw, Patrick. 2010. *Freedom of Information: The Law, the Practice and the Ideal*. Cambridge: Cambridge Univ. Press.

---. 2006. "Freedom of Information and Openness: Fundamental Human Rights?" *Administrative Law Review* 58: 177–218.

Callon, Michel, Pierre Lascoumes, and Yannick Barthe. 2009. *Acting in an Uncertain World: An Essay on Technical Democracy*. Trans. G. Burchell. Cambridge, MA: MIT Press.

Callon, Michel, and Vololona Rabeharisoa. 2003. "Research 'in the Wild' and the Shaping of New Social Identities," *Technology in Society* 25: 193–204.

Cuillier, David. 2010. "Honey v. Vinegar: Testing Compliance-Gaining Theories in the Context of Freedom of Information Laws," *Communication Law and Policy* 15: 203–29.

DeLand, Michael. 2013. "Basketball in the Key of Law: The Significance of Disputing in Pick-Up Basketball," *Law and Society Review* 47: 653–84.

DiMaggio, Paul J., and Walter W. Powell. 1983. "The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields," *American Sociological Review* 48: 147–60.

Epp, Charles R. 2000. "Exploring the Costs of Administrative Legalization: City Expenditures on Legal Services, 1960–1995," *Law and Society Review* 34: 407–30.

Galison, Peter. 2004. "Removing Knowledge," *Critical Inquiry* 31: 229–43.

Glover, Mark, Sarah Holsen, Craig MacDonald, Mehrangez Rahman, and Duncan Simpson. 2006. *Freedom of Information: History, Experience and Records and Information Management Implications in the USA, Canada and the United Kingdom*. London, UK: Constitution Unit.

Grube, Nick. 2013. "Many States Charge Insane Fees for Access to Public Records," Huffington Post October 17. http://www.huffingtonpost.com/2013/10/17/fees-for-public-records_n_4119049.html (accessed June 30, 2016).

Halstuk, Martin E., and Bill F. Chamberlin. 2006. "The Freedom of Information Act 1966–2006: A Retrospective on the Rise of Privacy Protection over the Public Interest in Knowing What the Government's Up To," *Communication Law and Policy* 11: 511–64.

Hazell, Robert. 1989. "Freedom of Information in Australia, Canada and New Zealand," *Public Administration* 67: 189–210.

Hazell, Robert, and Ben Worthy. 2010. "Assessing the Performance of Freedom of Information," *Government Information Quarterly* 27: 352–59.

Hazell, Robert, Gabrielle Bourke, and Ben Worthy. 2012. "Open House: Freedom of Information and Its Impact on the UK Parliament," *Public Administration* 90: 901–21.

Holsen, Sarah. 2007. "Freedom of Information in the UK, US, and Canada," *Information Management Journal* 41: 50–55.

Holsen, Sarah, and Martial Pasquier. 2011. "What's Wrong with This Picture? The Case of Access to Information Requests in Two Continental Federal States—Germany and Switzerland," *Public Policy and Administration* 27: 283–302.

Jiwani, Farzana Nanji, and Tamara Krawchenko. 2014. "Public Policy, Access to Government, and Qualitative Research Practices: Conducting Research within a Culture of Information Control," *Canadian Public Policy* 40: 57–66.

Katz, Joan M. 1969. "Games Bureaucrats Play: Hide and Seek under the Freedom of Information Act," *Texas Law Review* 48: 1261–84.

Keen, Mike F. 1999. *Stalking the Sociological Imagination: J. Edgar Hoover's FBI Surveillance of American Sociology*. Westport CT: Greenwood.

Lee, Raymond M. 2005. "The UK Freedom of Information Act and Social Research," *International Journal of Social Research Methodology* 8: 1–18.

Lippert, R., and K. Walby. 2014. "Marketization, Knowledge Work, and 'Users Pay' Policing in Canada," *British Journal of Criminology* 54: 260–80.

Monaghan, Jeffrey. 2015. "Four Barriers to Access to Information: Perspectives of a Frequent User," in *Access to Information and Social Justice: Critical Research Strategies for Journalists, Scholars and Activists*, edited by J. Brownlee and K. Walby. Winnipeg, MB: Arbeiter Ring Publishing.

Peisakhin, Leonid, and Paul Pinto. 2010. "Is Transparency an Effective Anti-corruption Strategy? Evidence from a Field Experiment in India," *Regulation & Governance* 4: 261–80.
Pozen, David E. 2005. "The Mosaic Theory, National Security, and the Freedom of Information Act," *Yale Law Journal* 115: 628–79.
Relly, Jeannine, and Carol Schwalbe. 2016. "How Business Lobby Networks Shaped the U.S. Freedom of Information Act: An Examination of 60 Years of Congressional Testimony," *Government Information Quarterly* (Online-First).
Relyea, Harold C. 2009. "Federal Freedom of Information Policy: Highlights of Recent Developments," *Government Information Quarterly* 26: 314–20.
Roberts, Alasdair. 1999. "Retrenchment and Freedom of Information: Recent Experience under Federal, Ontario, and British Columbia Law," *Canadian Public Administration* 42: 422–51.
---. 2000. "Less Government, More Secrecy: Reinvention and the Weakening of Freedom of Information Law," *Public Administration Review* 64: 308–20.
---. 2006. *Blacked Out: Government Secrecy in the Information Age*. Cambridge: Cambridge Univ. Press.
Savage, Ashley, and Richard Hyde. 2014. "Using Freedom of Information Requests to Facilitate Research," *International Journal of Social Research Methodology* 17: 303–17.
Sheaff, Mike. 2016. "Constructing Accounts of Organisational Failure: Policy, Power and Concealment," *Critical Social Policy* 37: 1–20.
Snell, Rick. 2000. "The Kiwi Paradox—A Comparison of Freedom of Information in Australia and New Zealand," *Federal Law Review* 28: 575–616.
Walby, Kevin, and Alex Luscombe. 2017. "Criteria for Quality in Qualitative Research and Use of Freedom of Information Requests in Social Research," *Qualitative Research* (Online-First).
Walby, Kevin, and Mike Larsen. 2012. "Access to Information and Freedom of Information Requests: Neglected Means of Data Production in the Social Sciences," *Qualitative Inquiry* 18: 31–42.
Watkins, Dawn, and Mandy Burton. 2013. *Research Methods in Law*. London: Routledge.
Wells, Christina E. 2004. "'National Security' Information and the Freedom of Information Act," *Administrative Law Review* 56: 1195–1221.
Wisely, John. 2015. "Changes to Michigan's FOIA Drops Costs of Public Records," *Detroit Free Press* January 18. http://www.freep.com/story/news/local/michigan/2015/01/18/michigan-foia-changes/21928995/ (accessed June 30, 2016).
Worthy, Ben. 2013. "'Some Are More Open than Others': Comparing the Impact of the Freedom of Information Act 2000 on Local and Central Government in the UK," *Journal of Comparative Policy Analysis* 15: 395–414.
Yeager, Matthew 2006. "The Freedom of Information Act as a Methodological Tool: Suing the Government for Data," *Canadian Journal of Criminology and Criminal Justice* 48: 499–521.