



A I E Z . a i · I N V E S T I G A T I V E R E S E A R C H R E P O R T

Can you FOIA a government official's ChatGPT prompts?

Usually yes, if it was kept.

Whether AI prompts and outputs created by public officials are disclosable public records under FOIA and the 50 state open-records laws, why reporters want them, and who has already obtained them.

01 • EXECUTIVE SUMMARY

The prompt is almost always a record. *Getting it depends on retention.*

In almost every U.S. jurisdiction, an AI prompt or output created by a public employee doing public business is a record by definition. Public records statutes define records by content and connection to public business, not by format. A prompt typed into ChatGPT on a government matter is functionally identical to an email draft, a text message, or a note. That much is settled by analogy. The landmark proof: reporter Nate Sanford (KNKX/Cascade PBS) obtained thousands of pages of ChatGPT logs from Washington cities in August 2025, including a mayoral grant-support letter to the Lummi Nation in which about half the sentences fully or partially matched ChatGPT's output.

Two fragile things decide whether you actually get the records. First, retention: a prompt typed into the consumer ChatGPT web interface while logged out is often not stored anywhere the agency controls, which produces the most common real-world outcome, “no responsive records.” Second, exemptions: agencies invoke deliberative-process or working-papers privileges, arguing a prompt is digital scratch work. The first U.S. ruling on point, a Pennsylvania Office of Open Records determination in *White & WITF v. Office of the Governor* (February 2026), held AI chats are presumptively public but can be withheld as personal notes when used solely by one employee and not shared.

No state statute or binding appellate decision yet names “AI prompts.” Everything is reasoning by analogy to the email, text-message, and Slack fights that came before.

For a requester, the practical takeaway is venue and framing. Florida, Washington, New Mexico, Montana, and North Dakota pair broad record definitions with narrow exemptions. Federal FOIA (Exemption 5), Pennsylvania, New Jersey, Texas, and Virginia carry muscular deliberative or working-papers exemptions a government lawyer will reach for immediately. Request final outputs over internal brainstorming, target enterprise tools that retain logs, and build the retention-gap challenge before you file.

02 • FINDINGS

What the law and the record show.

The statutory text reaches AI prompts in nearly every jurisdiction; the fights are retention, exemptions, and custody. The findings below separate what is settled by analogy from what has actually been litigated or formally opined.

Finding One: The statutory definition of “record” already captures AI prompts and outputs

Every U.S. open-records regime defines its subject matter functionally. The federal FOIA (5 U.S.C. § 552) and the Federal Records Act turn on whether information is made or received in connection with the transaction of public business, regardless of form. California's CPRA covers any writing “prepared, owned, used, or retained” by an agency; Washington's PRA and Florida's Chapter 119 are equally format-neutral.

The leading guidance agrees. The UNC School of Government concluded that both the prompts an official gives an AI tool and the outputs received are subject to the public records law, because it is the content and purpose of a record, not its location, that controls. NARA treats AI-generated forecasts, summaries, and policy recommendations as federal records when they contribute to government operations. The Texas State Library and Archives Commission put it plainly: AI-generated records are still records.

Finding Two: The retention gap, not the exemptions, defeats most requests

This is the dispositive practical barrier and it is not an exemption at all; it is the absence of a record. Consumer chatbots used while logged out may never log the prompt anywhere the agency can export. Under most laws an agency need only produce records that exist on the date of the request, and is never required to create one. Bellingham Mayor Kim Lund

acknowledged using ChatGPT and Claude but said her chats were not saved because she was not logged in, and called the work transitory.

TAKEAWAY FOR THE NEWSROOM

Enterprise tiers flip this. Microsoft Copilot for Government and ChatGPT Enterprise/Edu create retrievable logs, and Seattle's AI policy requires approved tools to support retrieval and export of all prompts and outputs. Target retention-rich systems first.

Finding Three: The exemptions are real but uneven, and weakest against final outputs

Agencies invoke deliberative-process privilege (federal Exemption 5 and its state analogues), attorney work-product, and transitory or personal-notes exemptions. These are strongest when a prompt reflects predecisional policy deliberation and weakest when the prompt produces a final public communication. Pennsylvania NewsMedia Association counsel Melissa Melewsy framed the line cleanly: if AI is used to formulate and create a press release, the press release is public.

Exemption 5 also has a structural limit relevant to consumer tools: it requires an inter-agency or intra-agency communication. A prompt sent to OpenAI, Google, or Anthropic, an outside commercial party, arguably flunks that threshold, much as courts treat communications with self-interested outside parties as outside the privilege. The consultant corollary is the agency's likely counter-argument.

Finding Four: Almost nothing is settled; the field moves by analogy

As of mid-2026 there is no U.S. state attorney general opinion or court decision squarely holding that AI prompts are or are not disclosable. The most authoritative U.S. determination is the Pennsylvania OOR ruling in White & WITF v. Office of the Governor (February 2026), an administrative, not judicial, decision. It issued a split result: chats that were personal notes under § 708(b)(12), used solely by one employee and not shared, were withheld; chat histories tied to implementation of ChatGPT and not used solely by one employee were ordered released. Everything else is guidance or analogy to the email and text-message fights.

03 · JURISDICTION - BY - JURISDICTION

Laws about prompts.

YES means the statute's record definition clearly reaches a work-related prompt and exemptions are comparatively narrow. **DEPENDS/UNSETTLED** means it is a record but a draft or deliberative exemption is a serious live threat, or the question is wholly untested. **NO/HARDEST** means a strong structural barrier, never a categorical exclusion, since no jurisdiction excludes AI by name. Every entry is unlitigated as to AI specifically except Pennsylvania.

JURISDICTION	RECORD?	KEY STATUTE	RATIONALE
Federal (FOIA)	DEPENDS / HARDEST	5 U.S.C. § 552; Federal Records Act	Record under FRA/NARA; Exemption 5 deliberative-process is a powerful shield for predecisional AI brainstorming.
Alabama	DEPENDS	Ala. Code § 36-12-40	Broad record definition; common-law deliberative/executive privileges create exemption risk.
Alaska	DEPENDS	AS 40.25.110--120	Broad definition; preliminary/deliberative exemptions via case law.
Arizona	YES / DEPENDS	A.R.S. § 39-121	Strong pro-disclosure presumption; no broad statutory deliberative exemption; best-interests balancing exists.
Arkansas	YES / DEPENDS	A.C.A. § 25-19-101 (FOIA)	Broad, pro-disclosure; working-papers exemption limited.
California	DEPENDS / HARDER	Gov. Code § 7920 et seq. (CPRA)	Fits 'prepared, owned, used, or retained'; Times Mirror deliberative-process balancing is a threat.
Colorado	DEPENDS / UNSETTLED	CORA § 24-72-200.1; CCJRA § 24-72-301	Record under CORA; common-law deliberative-process and work-product carve-outs; CCJRA gives broad custodial discretion.
Connecticut	DEPENDS	Conn. Gen. Stat. § 1-200 et seq.	Broad; § 1-210(b)(1) preliminary drafts/notes exemption requires public-interest balancing.

JURISDICTION	RECORD?	KEY STATUTE	RATIONALE
Delaware	DEPENDS / UNSETTLED	29 Del. C. § 10001 (FOIA)	Record covered; broad 'in connection with' language; deliberative-type exemptions exist.
Florida	YES (best venue)	Art. I § 24 Fla. Const.; Ch. 119	Extremely broad definition, constitutional access, no general deliberative-process exemption.
Georgia	YES / DEPENDS	O.C.G.A. § 50-18-70	Broad definition; limited exemptions; some pending-decision protection.
Hawaii	DEPENDS	HRS § 92F (UIPA)	Record covered; frustration-of-deliberation exemption historically recognized, since narrowed.
Idaho	YES / DEPENDS	Idaho Code § 74-101	Broad; some draft/deliberative exemptions.
Illinois	DEPENDS	5 ILCS 140 (FOIA)	Record covered (Spangher target); § 7(1)(f) preliminary-drafts deliberative shield.
Indiana	DEPENDS	Ind. Code § 5-14-3	Record covered; deliberative-material exemption § 5-14-3-4(b)(6).
Iowa	DEPENDS	Iowa Code ch. 22	Record covered; case-law deliberative privilege.
Kansas	DEPENDS	K.S.A. § 45-215 (KORA)	Record covered; exemptions for notes/preliminary drafts.
Kentucky	DEPENDS	KRS § 61.870	Record covered; preliminary drafts/notes and deliberative-process privilege recognized.
Louisiana	YES / DEPENDS	La. R.S. § 44:1	Broad constitutional/statutory access; some deliberative exemptions.
Maine	YES / DEPENDS	1 M.R.S. § 401 (FOAA)	Broad; limited working-papers exemptions.
Maryland	DEPENDS	Md. Code, GP § 4-101 (PIA)	Record covered; inter/intra-agency deliberative exemption modeled on Exemption 5.
Massachusetts	DEPENDS / HARDER	M.G.L. c. 66 § 10; c. 4 § 7(26)	Record covered; policy-deliberation exemption (c); historically weak enforcement.
Michigan	DEPENDS	MCL § 15.231 (FOIA)	Record covered (Spangher target); frank-communications deliberative exemption § 13(1)(m).
Minnesota	YES / DEPENDS	Minn. Stat. ch. 13 (MGDPA)	Data-classification regime; much is public data, though draft/preliminary data may be nonpublic.
Mississippi	DEPENDS	Miss. Code § 25-61-1	Record covered; working-papers/deliberative exemptions.
Missouri	YES / DEPENDS	Mo. Rev. Stat. § 610 (Sunshine)	Broad; some closed deliberative records permitted.
Montana	YES (strong venue)	Mont. Const. art. II § 9	Constitutional right to know; presumption of openness with narrow privacy balancing.
Nebraska	DEPENDS	Neb. Rev. Stat. § 84-712	Record covered; preliminary/working exemptions.
Nevada	YES / DEPENDS	NRS ch. 239	Pro-disclosure presumption; balancing test for deliberative material.
New Hampshire	YES / DEPENDS	RSA ch. 91-A	Broad; preliminary drafts/notes exemption read narrowly.
New Jersey	NO / HARDEST	OPRA, N.J.S.A. 47:1A-1	OPRA expressly excludes advisory, consultative, or deliberative material from the definition of a record.
New Mexico	YES (strong venue)	NMSA § 14-2-1 (IPRA)	Short list of exemptions and no general deliberative-process exemption.
New York	DEPENDS	Pub. Off. Law § 84 (FOIL)	Record covered; § 87(2)(g) intra-agency exemption protects opinions but requires factual/final disclosure.
North Carolina	YES / DEPENDS	N.C.G.S. § 132-1	Broad; UNC SOG guidance says prompts/outputs are records; limited draft protections.
North Dakota	YES (strong venue)	N.D.C.C. § 44-04-18; Art. XI § 6	Constitutional open-records presumption; narrow exemptions.
Ohio	YES / DEPENDS	Ohio Rev. Code § 149.43	Broad; some trial-preparation/deliberative limits.
Oklahoma	DEPENDS	51 O.S. § 24A.1	Record covered; deliberative/personal-notes exemptions.
Oregon	DEPENDS	ORS § 192.311	Record covered; internal-advisory-communications exemption subject to balancing.
Pennsylvania	NO / HARDEST	RTKL, 65 P.S. § 67.101	§ 708(b)(10) predecisional and § 708(b)(12) personal-use notes; White & WITF (Feb. 2026) withheld solely-personal AI chats.
Rhode Island	DEPENDS	R.I. Gen. Laws § 38-2-1 (APRA)	Record covered; preliminary drafts/notes exemption.
South Carolina	DEPENDS	S.C. Code § 30-4-10 (FOIA)	Record covered; advisory memoranda/correspondence exemption.

JURISDICTION	RECORD?	KEY STATUTE	RATIONALE
South Dakota	DEPENDS	SDCL ch. 1-27	Record covered; broad drafts/notes exemptions; historically restrictive.
Tennessee	YES / DEPENDS	T.C.A. § 10-7-503	Broad citizen access; deliberative-process privilege recognized in Swift but limited.
Texas	DEPENDS / HARDER	Gov. Code ch. 552 (PIA)	Record covered (TSLAC: AI-generated records are still records); § 552.111 deliberative exemption mirrors Exemption 5.
Utah	DEPENDS	Utah Code § 63G-2 (GRAMA)	Record covered; draft/protected classifications create exemption risk.
Vermont	YES / DEPENDS	1 V.S.A. § 315	Broad; some internal-materials exemptions.
Virginia	NO / HARDER	Va. Code § 2.2-3700 (FOIA)	Numerous discretionary exemptions; broad working-papers exemption for the Governor (§ 2.2-3705.7).
Washington	YES (best venue)	RCW 42.56	Very broad definition; exemptions narrowly construed; deliberative exemption is temporary. Proven: thousands of pages of ChatGPT logs released.
West Virginia	YES / DEPENDS	W. Va. Code § 29B-1-1	Broad; internal-memoranda deliberative exemption exists.
Wisconsin	YES / DEPENDS	Wis. Stat. § 19.31	Strong pro-disclosure declaration; balancing test rather than categorical deliberative exemption.
Wyoming	DEPENDS	Wyo. Stat. § 16-4-201	Record covered; deliberative-process and inter/intra-agency exemptions present.
District of Columbia	DEPENDS	D.C. Code § 2-531	Record covered; § 2-534(a)(4) deliberative exemption modeled on Exemption 5.

Ratings are analytical projections from statutory structure and exemption breadth, not holdings. With the lone exception of Pennsylvania's OOR determination, no jurisdiction has a binding ruling on AI prompts.

04 · WHY REPORTERS WANT THIS

The accountability case.

The journalistic rationale is specific. Each reason below maps to a documented story or a live risk in government AI use.

Detecting AI-ghostwritten government work

The Washington records showed ChatGPT drafting a mayoral grant-support letter (about half its sentences matching the chatbot), constituent-email replies, social posts, talking points, speeches, and audit responses, none labeled as AI-generated.

Improper delegation of official judgment

A prompt asking ChatGPT to decide or rank policy options reveals whether human officials are exercising independent judgment or outsourcing it to a model.

Bias and hallucination risk in decisions

When AI output feeds benefits determinations, enforcement, or rulemaking, hallucinations and bias become governance failures (see the EFF FOIA suit over CMS's WISer AI prior-authorization program).

Confidential-data leakage

Prompts reveal whether employees pasted residents' confidential data or security information into consumer tools. San Jose warned staff to presume anything submitted could end up on the front page.

Procurement and spending transparency

In Bellingham, records showed an employee asking ChatGPT to write RFP requirements that would exclude one vendor and favor another, directly relevant to a multimillion-dollar contract award.

Verifying agencies follow their own AI policies

Many agencies adopted AI-use and disclosure policies. Prompt logs are the only way to audit whether anyone actually complies.

05 · WHO HAS OBTAINED THEM

The documented record. *Reporters, outlets, outcomes.*

Real-world examples where journalists, researchers, and transparency organizations filed records requests for AI prompts, outputs, logs, policies, or vendor contracts, and what came back.

Washington — the landmark success

Nate Sanford (KNKX / Cascade PBS) filed PRA requests for roughly two years of ChatGPT logs from nearly a dozen cities. Bellingham and Everett produced thousands of pages (published Aug. 26–31, 2025): ChatGPT wrote a mayoral letter to the Department of Commerce supporting a Lummi Nation grant, constituent replies, Instagram posts, speeches for Mayor Cassie Franklin, and a draft city AI policy. The retention gap surfaced immediately, with no chat histories from elected officials.

MuckRock crowdsourcing and replication

MuckRock (Sept. 16, 2025) launched a FOIAFriday campaign with Sanford to crowdsource which agencies to hit, framing logs as public records like texts and emails. Earlier, Todd Feathers requested all generative-AI inputs, prompts, outputs, and chat logs from the Seattle Police Department (Aug. 2024).

The Stanford / USC / KNKX / NYT academic project

Postdoctoral researcher Alexander Spangher leads a team filing requests across many states and cities (Illinois, Michigan, Boston, San Francisco, Long Beach, Kansas City) and federal agencies (FCC, HHS, USDA, DOJ) for AI interaction logs in native electronic format. As of mid-2026 consolidated results were not yet published; many requests remained pending.

Federal AI image prompts

CJ Ciaramella (Reason) filed a MuckRock FOIA to DHS for all prompts or logs for AI tools, including image generation, by the Office of Public Affairs social-media team, covering DHSChat and other generative-AI programs. DHS had moved staff from commercial tools to the internal DHSChat, which improves retention but may strengthen Exemption 5 claims.

United Kingdom — the precedent-setting FOI win

New Scientist (Chris Stokel-Walker, June 2025) obtained UK Science/Technology Secretary Peter Kyle's ChatGPT prompts via FOI, believed to be the first successful release of a minister's chatbot interactions. Foreign law, not binding here, but the clearest proof of concept.

PARALLEL PRESSURE

AI hallucinations in court filings are driving records interest in government lawyers' AI use. Damien Charlotin's database lists 1,546 cases; Bloomberg Law (Dec. 2025) estimated 712 decisions on hallucinated content, about 90% written in 2025. From *Mata v. Avianca* to *MyPillow (Coomer v. Lindell)* to the ASBCA striking a contractor brief where over 70% of citations were inaccurate, these create a direct accountability hook.

06 · SOURCES

All sources publicly available as of June 2026. Evidence grades: A = official document or ruling; B = named executive statement; C = vendor/agency policy; D = trade publication or news; E = reasoned inference, clearly labeled. This is an emerging area: outside the Pennsylvania OOR determination, essentially nothing has been litigated to a final judicial decision.

Nate Sanford, KNKX/Cascade PBS — Washington cities' ChatGPT logs (Aug. 26, 2025) | <https://www.knkx.org/government-politics/2025-08-26>

MuckRock — AI Chatbot Interaction Logs request series & FOIAFriday (Sept. 16, 2025) | <https://www.muckrock.com/foi/united-states-of-america-10/ai-chatbot-interaction-logs-federal-communications-commission-208917/>

WITF — PA Office of Open Records ruling, *White & WITF v. Office of the Governor* (Feb. 18, 2026) | <https://www.witf.org/2026/02/18/public-access-to-pennsylvania-officials-ai-conversations-may-be-limited-after-agency-ruling/>

UNC School of Government — AI and the Public Records Act | <https://www.sog.unc.edu/blogs/coates-canons/intersection-artificial-intelligence-and-public-records-act>

Chris Stokel-Walker, New Scientist — Peter Kyle's ChatGPT prompts via FOI (June 2025) | <https://www.newscientist.com/article/2483166>

Damien Charlotin — AI Hallucination Cases database | <https://www.damiencharlotin.com/hallucinations/>