Sunshine as Disinfectant: The Effect of State Freedom of Information Act Laws on Public Corruption

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Abstract

This paper investigates the effect of open government provisions on public corruption in the United States. Specifically, it assesses the impact of switching from a weak to a strong state-level FOIA law on corruption convictions for state and local government officials. The evidence suggests that strengthening FOIA laws has two offsetting effects: reducing corruption levels and increasing the probability that corrupt acts are detected. Corruption conviction rates approximately double after the switch, which suggests an increase in detection probabilities. However, corruption conviction rates gradually decline from this new elevated level as the time since the switch from weak to strong FOIA increases. This decline is consistent with officials reducing the rate at which they commit corrupt acts by over fifty percent, and it is still apparent as long as 10 to 15 years after the change in FOIA laws. There is no concomitant change in the corruption convictions of federal officials in these same states.

JEL Classification: D73, D78, H11, K0
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1 Introduction

Brett Blackledge, a reporter for *The Birmingham News*, won the 2007 Pulitzer Prize for Investigative Reporting for a series of articles that "[exposed] cronyism and corruption in the [Alabama's] two-year college system, resulting in the dismissal of the chancellor and other corrective action."[1] Central to his investigation was the collection of reams of financial records, contracts, and disclosure forms. Blackledge used this information to piece together a compelling story about state legislators and their associates receiving kickbacks and cushy jobs from various members of the school system administration. Many of the official records that he relied upon were uncovered in accordance with Alabama's public records law.

In another highly publicized case from 2007, reporters for the Detroit Free Press submitted a Freedom of Information Act (FOIA) request for documents dealing with a settlement with a police whistleblower. After much wrangling in court, the documents were eventually released. They revealed startling evidence of perjury and obstruction of justice by mayor Kwame Kilpatrick that eventually led to his resignation, prosecution, and conviction.[2]

These anecdotes, and many others like them, highlight the role that access to public documents can play in helping a free press check the abuse of power by public officials.[3] One of the most important changes in the relationship between public officials and the press in recent years has been the widespread adoption of FOIA laws at multiple levels of government. These laws provide clear guarantees regarding the rights of individuals and organizations to access information about government activities, and they make it easier for members of the press and members of the public at large to hold those in power accountable for their actions.

Most of the literature investigating governmental transparency and corruption has

[1] Pulitzer Citation and copies of Blackledge's prize-winning stories available at http://www.pulitzer.org/citation/2007,Investigative+Reporting.

[2] "Free Press Pushed for Freedom of Information," Detroit Free Press, September 5, 2008. http://www.freep.com/apps/pbcs.dll/article?AID=/20080905/NEWS01/809050340/1007/NEWS05

[3] In addition to the anecdotal evidence, there is a growing body of literature that addresses the role of the media in promoting government accountability. Some recent examples include Djankov et al. (2003), who find that state ownership of the media is associated with a number of undesirable characteristics (less press freedom, fewer political rights, inferior governance, underdeveloped capital markets, inferior health outcomes, etc.), Besley and Prat (2006), who develop a model that predicts that media capture by the government increases the likelihood that elected politicians engage in corruption and/or rent extraction and reduces the likelihood that bad politicians are identified and replaced, and Snyder and Strömberg (2010), who find that more active media coverage of U.S. House representatives leads to better informed voters, which increases monitoring, makes the representatives work harder, and results in better policies from the constituents' perspective.

lauded transparency (see, e.g., Klitgaard (1988), Rose-Ackerman (1999), Brunetti and Weder (2003), Peisakhin and Pinto (2010), Peisakhin (forthcoming)).[4] Indeed, the literature suggests that gathering and analyzing information is one of the main weapons used to combat corruption. For example, Klitgaard (1988) discusses several information-gathering practices that are designed to thwart corruption, such as agents tasked with spot checking customs activities in Singapore, investigations of government officials for having "unexplained assets" in Hong Kong, and intelligence officers inspecting the lifestyles and bank accounts of officials in the Philippines. Such practices suggest that government officials recognize that information is a valuable resource in the fight against corruption.

Nonetheless, governmental transparency need not be beneficial. Bac (2001), for instance, contends that transparency can have a perverse effect on corruption. Specifically, he argues that while more transparency tends to decrease corruption, it may also provide better information to outsiders about whom to bribe. If the incentive to establish and exploit political connections for corrupt purposes is greater than the disincentive that results from the higher probability that corruption will be detected, then more transparency might actually increase corruption.

Prat (2005) also argues that complete transparency is not always desirable. He considers a principal-agent setting in which the principal can have two types of information about the agent: information about the consequences of the agent's action and information directly about the action itself. In his model, the former is always beneficial, while the latter can have detrimental effects. If the latter type of information is available, then the agent has an incentive to ignore useful private signals. This result may explain why most countries that adopt FOIA laws place restrictions on information disclosure during the pre-decision process, but make information freely available after decisions are implemented.

Although the weight of the empirical evidence clearly favors the view that increased transparency is beneficial, the evidence with respect to FOIA laws is rather limited. There have been a few recent studies of the impact of these laws on *perceptions* of corruption in cross-country settings. Islam (2006) constructs indices that measure (i) the frequency with which governments update publicly available economic data and (ii) the presence of FOIA laws and the length of time the laws have been in existence. She finds that there is a negative correlation between these indices and her measures of perceived corruption. In contrast, Costa (2009) finds that the adoption

[4]Corruption is defined as the abuse of public office for private gain.

of FOIA laws leads to an increase in the perceived corruption level, particularly in the first five years after enactment of the legislation, perhaps because greater transparency increases citizens' awareness of government's actions. Escaleras et al. (2009), on the other hand, find no evidence of a significant relation between the existence of FOIA laws and perceived corruption levels for developed countries, but find a positive and significant correlation between FOIA laws and perceived corruption in developing countries. The authors attribute this latter finding to the fact that developing countries have relatively weak institutions that make FOIA laws less effective.

To our knowledge, there are no studies that use U.S. data to examine the impact of state-level FOIA laws on the prevalence of public corruption among state and local government officials. We see three important advantages to undertaking such a study. First, parameter heterogeneity should be reduced given that the variation in the legal, social, cultural, and political institutions is much lower across states than across countries. Second, the data are objective. We can examine the number of state and local public officials actually convicted for corrupt acts rather than rely on the type of subjective survey-based data used in the cross-country studies. Hence, our results should provide an objective basis for assessing whether FOIA laws provide an effective tool for those who seek to expose and punish corruption. Finally, there is a set of identifiable public officials, federal employees, who should not be affected by state FOIA laws. This facilitates a straightforward falsification test.

We measure corruption using annual state-level data for 1986-2009 reported by TRACfed, which compiles information on corruption convictions from the Department of Justice Public Integrity Section. The TRACfed database lists criminal convictions of federal, state, and local public employees for official misconduct or misuse of office. We expect the number of corruption convictions of state and local officials, only, to respond to changes in state FOIA laws, and thus it is important to have separate measures of convictions at the state, local, and federal levels. TRACfed is the only database that reports the disaggregated convictions data.

Information on the provisions of state FOIA laws is obtained from the Open Government Guide. We construct measures of the strength of state FOIA laws by analyzing the open records statutes, case law, and Attorney General's opinions for each state. Our goal is to assess the effectiveness of these laws in promoting an open government and providing citizens with access to public records.

We expect states that create a presumption for disclosure, place limits on fees, and impose deadlines for a response to FOIA requests to have more open and transparent

government. This should make it more difficult for corrupt public officials to escape public scrutiny. All states have some sort of law governing the public's access to records held by state and local officials, but the details of the statutory provisions of FOIA laws vary widely across states and over time. We classify states in two categories: those that provide strong access to public records (strong FOIA states) and those that provide weak access (weak FOIA states). Between 1986 and 2009, 12 states switched from weak to strong FOIA. When policy changes, there are substantial changes in corruption conviction rates for state and local public officials, but no obvious change in the conviction rates for federal officials. State FOIA laws affect either conviction or corruption rates of state and local officials.

Encouraged by this finding, we propose a simple reduced-form model to help disentangle changes in conviction rates from changes in corruption rates. The modeling exercise is important because a naïve analysis might simply attribute all changes in conviction rates to changes in the level of corruption, leading to the implausible conclusion that strengthening FOIA laws actually increases corruption. Under our model, strengthening FOIA laws has two effects: reducing corruption levels and increasing the probability that the corrupt acts are detected. By making plausible assumptions about the process by which corrupt acts are committed, uncovered and prosecuted, and otherwise exit the system (e.g., statutes of limitation, death of corrupt officials, etc.), we can partially separate the two effects.

Guided by this model, we investigate the impact of switching from weak to strong FOIA on corruption convictions for state and local government officials. This specification controls for state and year fixed effects as well as known determinants of corruption rates. Corruption conviction rates rise substantially after the switch, which suggests a significant increase in detection probabilities. However, corruption conviction rates decline from this new elevated level as the time since the switch from weak to strong FOIA increases. This decline in conviction rates occurs over a relatively long time span. It is still apparent as long as 10 to 15 years after the change in the FOIA laws.

The remainder of the paper is organized as follows. In section 2 we develop a simple reduced-form model of policy, corruption and conviction. In section 3 we describe the data used in our analysis and our empirical strategy for identifying the impact of state-level FOIA laws on corruption. In section 4 we present the results of the empirical analysis. In section 5 we interpret these results and offer a few concluding remarks.

2 Reduced-Form Model of Policy, Corruption and Conviction

We begin our analysis of the relation between state-level FOIA laws and corruption convictions by presenting a model that illustrates the nature of the empirical challenge. The model includes only the bare minimum features necessary to understand the corruption and conviction process and how FOIA laws might affect each. Thus we do not explicitly model public employees' corruption decisions. Instead, we develop a reduced-form specification that allows for the possibility that public employees alter their behavior in response to a change in FOIA policy but remains agnostic about the exact mechanism by which this response occurs.

2.1 The Model

Assume that in state s and year t under policy regime $j \in \{FOIA, NOFOIA\}$ there is a stock of corrupt acts that could potentially be prosecuted, $P_{s,t,j}$ (measured on a per capita basis). In a given policy regime, a fraction γ_j plus some random noise $\epsilon^C_{s,t,j}$ of these acts are successfully prosecuted and convicted, so total convictions (per capita) is given by

$$C_{s,t,j} = \gamma_j P_{s,t,j} + \epsilon^C_{s,t,j}. \tag{1}$$

Finally, assume that in each period a fraction $(1-\alpha)$ of the extant stock of corrupt acts degrade out of existence (maybe the criminal dies, or the crime passes the statute of limitations), but some additional corrupt acts are committed, which are made up of a policy-dependent constant $N_{s,j}$ plus noise $\epsilon^P_{s,t,j}$.

Under these assumptions, the stock transition is governed by the following equation

$$P_{s,t+1,j} = \alpha(P_{s,t,j} - C_{s,t,j}) + N_{s,j} + \epsilon^P_{s,t,j}. \tag{2}$$

If we replace appropriately to express everything in terms of C, we are left with

$$C_{s,t,j} = \alpha(1-\gamma_j)C_{s,t-1,j} + \gamma_j N_{s,j} - \alpha\epsilon^C_{s,t-1,j} + \gamma\epsilon^P_{s,t,j} + \epsilon^C_{s,t,j}. \tag{3}$$

We are interested in estimating the average $N_{s,FOIA}/N_{s,NoFOIA}$, which measures the percent change in the arrival rate of new corrupt acts when a FOIA provision is adopted in the state, and $\gamma_{FOIA}/\gamma_{NoFOIA}$, which measures the percent change in the probability of getting caught when a strong FOIA law is enacted. These quantities

cannot be directly observed, but with some further assumptions, we can identify them in our data.

We can express the steady-state rate of observed convictions in this model as

$$\overline{C}_{s,j} = \frac{\gamma_j N_{s,j}}{1 - \alpha(1 - \gamma_j)}. \tag{4}$$

This steady-state rate is relatively easy to estimate for any given state and policy regime. The average level of convictions is a consistent estimator of the steady state. The relation between the steady-state rate of convictions and the rate of corrupt acts depends on the probability of conviction, γ_j, which will likely be affected by changing the policy regime.

2.2 Corruption versus Conviction

If we are willing to assume that the conviction rate changes quickly, while the corruption rate changes only with a lag, we can disentangle the conviction effect from the corruption effect. To see this, define three response periods: $r \in \{Pre, Short, Long\}$ and assume that $N_{s,Pre} = N_{s,Short} = N_{s,NoFOIA}$ and $N_{s,Long} = N_{s,FOIA}$, while $\gamma_{Pre} = \gamma_{NoFOIA}$ and $\gamma_{Short} = \gamma_{Long} = \gamma_{FOIA}$. With these assumptions, the following holds in steady state:

$$\frac{N_{s,FOIA}}{N_{s,NoFOIA}} = \frac{\overline{C}_{s,Long}}{\overline{C}_{s,Short}} \tag{5}$$

$$\frac{\gamma_{FOIA}}{\gamma_{NoFOIA}} \approx \left[\frac{\gamma_{FOIA}}{\gamma_{NoFOIA}}\right]\left[\frac{1 - \alpha(1 - \gamma_{NoFOIA})}{1 - \alpha(1 - \gamma_{FOIA})}\right] = \frac{\overline{C}_{s,Short}}{\overline{C}_{s,Pre}} \tag{6}$$

We can identify the ratio of the parameters of interest by contrasting conviction rates in the three periods. Our estimate of the change in the probability of corrupt acts being convicted will be slightly biased downward, because a low conviction rate leads to a higher steady-state stock of corrupt acts, but this bias will be small for either small values of the conviction probability (γ) or small values of degradation probability (α). In practice, both probabilities are likely to be small. Accordingly, we expect the bias, which is a function of their product, to be *very* small.

To take this model to the data, we will need to find suitable measures of corruption and FOIA strength. We will also need to define a short-run and long-run time horizon. Instead of defining them ex-ante, we will try to let the data inform our choices. The next section details the data and our empirical approach.

3 Data Description and Some Suggestive Patterns

3.1 The Data

Corruption Data

We obtain the corruption data from the TRACfed database maintained by the Transactional Records Access Clearinghouse (TRAC), a nonpartisan data gathering, research, and data distribution organization associated with Syracuse University.[5] This database lists criminal convictions of federal, state, and local public employees for official misconduct or misuse of office. These data are collected and reported annually by the Executive Office of U.S. Attorneys (EOUSA) of the U.S. Justice Department. Each U.S. Attorney's office maintains detailed information on the workload of its employees and certifies the accuracy of the data each year. Our sample covers the years 1986 to 2009 for the 50 states. We report the summary statistics in Table 1.

Corruption is measured by the number of state and local public officials convicted for corrupt acts per 100,000 residents. The public officials in question include governors, legislators, department or agency heads, court officials, law enforcement officials, mayors, city council members, city managers, and their staff. Examples of activities defined as corrupt acts include bribery of a witness, embezzlement or theft of government property, misuse of public funds, extortion, influencing or injuring an officer or a juror, and obstruction of criminal investigations. Because we are looking at FOIA laws by state it is important to have a breakdown of convictions by the level of government. We would not expect state FOIA laws to affect convictions of federal public officials, so we use the number of corruption convictions of federal employees for a falsification test.

If we consider only state and local convictions per capita, then the most corrupt states for the years 1986-2009 are Montana, Mississippi, North Dakota, and New Jersey, and the least corrupt states are Iowa, Utah, Colorado, South Dakota, and New Hampshire. Our data on corruption convictions differs from the corruption convictions data provided by the Public Integrity section (PIN) of the Department of Justice. The PIN data, which have been used extensively in the literature to measure corruption in the U.S. (see, e.g., Goel and Nelson (1998), Glaeser and Saks (2006), Cordis (2009)), do not differentiate between convictions of federal, state, and local employees. The correlation between the convictions (federal, state, local, and other)

[5]Appropriately enough for this paper, much of the TRACfed data results from vigorous use of federal FOIA law.

per capita reported by the TRACfed and the convictions per capita reported by the PIN is 0.73 for our sample period.

FOIA Laws Data

We obtain data on FOIA laws from the Open Government Guide, a comprehensive source of information about open government law and practice in each of the 50 states. It is published by The Reporters Committee for Freedom of the Press.[6] The compendium, which is prepared by volunteer attorneys who are experts in open government laws in their respective states, contains information on state statutes, case law, and Attorneys General's opinions. The first edition of the guide was published in 1989.

Statutory provisions designed to ensure that citizens have access to public records can be traced back to the early 1900s, and common law access provisions go back even further. Progress on guaranteeing access to information, however, was relatively limited until the 1970s. In the last 40 years, most states have enacted new open records statutes, amended the early versions, or substantially rewritten their statutes in an effort to strengthen the laws, often to clarify or broaden their scope in response to changing technology, judicial decisions, Attorneys General's opinions, or political scandals.

In Texas, for example, the common law right to access government information dates back to the mid 1800s. It took until 1973, however, for the state legislature to pass an Open Records Act. This came about largely in response to the Sharpstown Bank Scandal of 1971, in which legislators were found to have accepted bribes in exchange for the passage of certain banking laws.

Similarly, the state of Iowa did not make substantial progress towards open government until 1967. In the first public records case considered in the Iowa Supreme Court, *Linder v. Eckard*, the Court denied the request for a certified copy of a written appraisal report on the grounds that appraisal reports were not public records. As a result of numerous complaints from the public, the Iowa General Assembly subsequently passed a bill to "protect the right of citizens to examine public records and make copies thereof" (chapter 68A of the Iowa Code). The public records law has been amended several times over the years.[7]

The latest Illinois FOIA law, which was passed in 2009, provides a more recent example. The state legislature decided to strengthen access to public records in the

[6]Available at http://www.rcfp.org/ogg/. Last accessed November 14, 2010.

[7]For more details see "Iowa's Freedom Of Information Act; Everything You've Always Wanted To Know About Public Records But Were Afraid to Ask," *Iowa L. Rev.*, vol. 57, 1972.

wake of a scandal that led to impeachment of the state's governor, Rod Blagojevich. The new law includes provisions that reduce the number of days to comply with a FOIA request, allow requesters to file a lawsuit as soon as the original request is denied without having to wait until their appeal is decided, require that governmental bodies explain why information falls under a certain exemption to FOIA, and limit the charges for copying and attorney fees.[8]

As might be anticipated from these examples, there is substantial variation in statutory provisions across states, particularly with respect to the records that are subject to disclosure and the disclosure procedures. We analyze the open records statutes, case law, and Attorney General's opinions for each state to assess their effectiveness in promoting an open government and providing citizens with access to public records. Our analysis consists of a detailed examination of procedural requirements for obtaining public records, such as the presumption for disclosure and exemptions, fee provisions, agencies' response times to a request, administrative appeal provisions, and penalties imposed for violation of the statutes.

We assume stronger access to public records exists in states that: create a presumption for disclosure and specifically define what records are not subject to disclosure; limit the fees charged for processing requests; impose relatively harsher penalties against agencies that do not comply with the law; award attorney's fees and court costs to a successful plaintiff that challenges an agency's denial; provide for a shorter initial response time to a request for a public record; and provide for an efficient administrative appeal process in case of an agency's denial.

We determine each state's score with respect to freedom of information by giving one point for each of the following criteria: (1) a provision that creates a presumption in favor of disclosure and identifies specific records as exempt from public access; (2) the lack of a generic public-interest exemption provision; (3) a provision that limits the fees charged for processing FOIA requests; (4) a provision that prohibits charging a fee for the time required to collect records; (5) a provision for waiver of the cost of search for or duplication of public records if the agency determines that disclosure is in the interest of the public; (6) a provision for criminal penalties for an agency's noncompliance with its disclosure obligations; (7) a provision for civil penalties for an agency's noncompliance with its disclosure obligations; (8) a provision for the award of attorneys' fees and costs to a successful plaintiff in a public records case; (9) and

[8]For more details see "Illinois revises transparency laws on heels of scandal," The News Media & The Law, vol. 33(4), 2009. Available at http://www.rcfp.org/news/mag/33-4/illinois_revises_transparency_laws_on_heels_of_scandal_18.html.

Table 1 Descriptive Statistics for FOIA Switchers and All States

Variable	Mean	Standard Deviation	Minimum	Maximum
Switchers Only		$N = 12$	$T = 24$	
State and Local Convic.	3.55	6.80	0.00	47.00
Federal Convic.	4.96	7.45	0.00	44.00
SL Convic per 100k	0.07	0.17	0.00	1.90
Fed. Convic per 100k	0.09	0.12	0.00	0.78
Pct. HS Grad.	82.52	6.42	61.62	92.50
GDP/cap (000s)	34.35	6.41	21.53	52.00
Population (M)	5.04	5.68	0.63	24.78
Strong FOIA Law	0.63	0.48	0.00	1.00
All States		$N = 50$	$T = 24$	
State and Local Convic.	3.50	5.77	0.00	47.00
Federal Convic.	6.16	10.36	0.00	83.00
SL Convic per 100k	0.07	0.14	0.00	1.90
Fed. Convic per 100k	0.11	0.14	0.00	1.64
Pct. HS Grad.	82.36	6.11	61.62	92.80
GDP/cap (000s)	36.40	7.73	21.20	72.36
Population (M)	5.46	5.99	0.45	36.96
Strong FOIA Law	0.49	0.50	0.00	1.00

Notes: Corruption convictions are from the TRACfed database (1986-2009). Strong FOIA is a dummy variable constructed from the Open Government Guide published by the Reporters Committee for Freedom of the Press (various years). Pct. HS Grad. is the share of the population aged 25 and up with a high school diploma or higher. Demographic data is from the U.S. Census Bureau (www.census.gov). GDP per capita data is from the Bureau of Economic Analysis.

a provision for administrative appeal of an agency's decision to deny a request for public records. Finally, we give one point for each of the following that is satisfied: time to respond to a request for access to public records is 30 days or less, time to respond is 15 days or less, and time to respond is 7 days or less. The total points for the states range from 1 to 11. We then classify each state as either "strong FOIA" (a score above 6) or "weak FOIA" (a score between 0 and 6).[9]

Consider, for example, the state of Pennsylvania. The state first enacted an open records act (known as the "Right to Know" Act) in 1957. The act was revised sub-

[9]The "strong" versus "weak" designation is obviously somewhat arbitrary. However, the results that we present below are reasonably robust to changes in the cutoff required to qualify as a "strong FOIA" state. Raising the cutoff produces weaker results overall, but the relation between corruption convictions and the strength of FOIA remains statistically significant. Lowering the required score slightly has no significant effect on the magnitude of the estimated coefficients, but the estimates are less precise than with the original cutoff.

stantially in 2002, and then revised again in 2008. The 2002 version of the act provides that agencies may charge fees for access to public records (postage, duplication, etc.), but it places limits on these fees (actual mailing costs, duplication costs comparable to those that would be incurred for similar duplication services provided by local businesses, etc.). Agencies are prohibited from charging a fee for reviewing records to determine whether they are subject to access under the act, and an agency may waive the duplication fees if it considers that doing so is in the public interest. A willful violation of the act can result in civil penalties. The act does not provide explicitly for criminal liability. Denial of access to records is subject to administrative appeal, and attorney fees and costs may be awarded to a plaintiff who successfully challenges a denial. There is no specific exemption from disclosure because it is in the public interest. An agency has 10 days from the receipt of a written request to respond. In 2008, the act was revised to define public records more broadly, create a presumption in favor of disclosure, put the burden of showing that records are not public records on the agency holding them, reduce the time to respond to a request to five business days, and increase the civil penalties for noncompliance.

In light of these provisions, Pennsylvania is awarded one point for item (2) for the years 1986-2009, one point for items (3), (4), (5), (7), (8) and (9) for the years 2003-2009, two points for the time to respond to a request for the years 2003-2008, and three points for the time to respond to a request for the year 2009. One additional point is awarded for item (1) for the year 2009. Thus the total score for Pennsylvania is one for 1986-2002, nine for 2003-2008, and 11 for 2009. It is therefore classified as a "weak FOIA" state for the 1986-2002 period and as a "strong FOIA" state for the 2003-2009 period.[10]

[10]South Carolina provides an example of a state that switches categories following a less dramatic change in the FOIA law. The state first adopted a FOIA law in 1974. The law was revised in 1987 to allow governmental bodies to create their own exemptions from the open records requirements. The law does not contain a specific exemption from disclosure because it is in the public interest, nor does it contain a provision for administrative appeal from denial of access to public records. With respect to the fees charged for processing a request, an agency may collect fees for access to public records, but the fees should not exceed the actual cost of searching for and copying records. In addition, the law provides for a reduction in the cost of search for public records if the information benefits the general public. A willful violation of the law is a misdemeanor and subject to escalating fines and possible imprisonment for repeat offenses, and a plaintiff who successfully challenges an agency's denial to access can be awarded reasonable attorney fees and other costs of litigation. An agency has 15 days from the receipt of a written request to notify the requestor of the agency's determination and the reasons for its position. If the agency fails to respond within this time frame, the request must be considered approved. In light of these provisions, South Carolina is awarded one point for item (1) for the years 1988-2009, one point for items (2), (5), (6) and (8), and two points for the time to respond to a request for all years in our sample. Thus it is classified as a

Between 1986 and 2009 many states revised or amended their FOIA laws. By our metric, 12 states switched from weak to strong FOIA during our sample period: New Hampshire(1987), South Carolina(1988), Idaho(1991), Utah(1993), Washington(1993), West Virginia(1993), New Mexico(1994), Texas(1996), North Dakota(1998), Nebraska(2001), New Jersey(2002), and Pennsylvania(2003). Based on average scores, Connecticut, Indiana, Louisiana, Colorado, and Vermont are among the states with relatively stronger access laws, while South Dakota, Alabama, Arizona, Wyoming, and Nevada are among the states with relatively weaker access laws. Our measure of the strength of FOIA laws is positively correlated with measures that have appeared elsewhere. For example, several surveys conducted and published by the Better Government Association (BGA) and the Investigative Reporters and Editors, Inc. (IRE) in 2002, and by the BGA and the National Freedom of Information Coalition (NFOIC) in 2007, rank the U.S. states and the District of Columbia based on the strength of their FOIA laws. The correlation between our FOIA score variable and the scores provided by these surveys is 0.76 for 2002 and 0.73 for 2007. The Spearman rank correlation coefficient is 0.68 for 2002 and 0.64 for 2007.

Our analysis is based on the *de jure* provisions of the FOIA statutes (appropriately updated for case law and Attorneys General's opinions), including provisions for external enforcement mechanisms that could potentially work to keep reluctant officials in line. There can be substantial differences between the formal requirements of the law and the responsiveness of public officials in practice.[11] Nonetheless, stronger formal rules should be associated with better practical access to public records, especially in a country such as the U.S. that has a well-functioning legal system. In a 2002 survey of 191 investigative journalists across the U.S., the Better Government Association found that the journalists ratings of their satisfaction with the state FOIA laws in the state in which they practice their craft were consistent with their ranking based on the formal provisions of the laws (Davis 2002).

"weak FOIA" state for the 1986-1987 period, with a score of six, and as a "strong FOIA" state for the 1988-2009 period, with a score of seven.

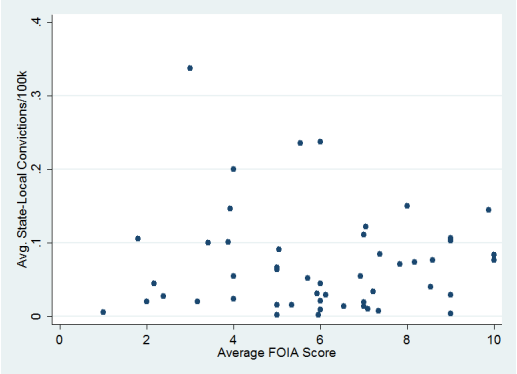
[11]See, for example, "N.C. open records requests can drag on," News & Observer, March 13, 2011, which discusses the failure of public officials to respond to requests for records in a timely manner. Available at http://www.newsobserver.com/2011/03/13/v-print/1049832/nc-open-records-requests-can-drag.html.

3.2 Corruption and FOIA Enaction

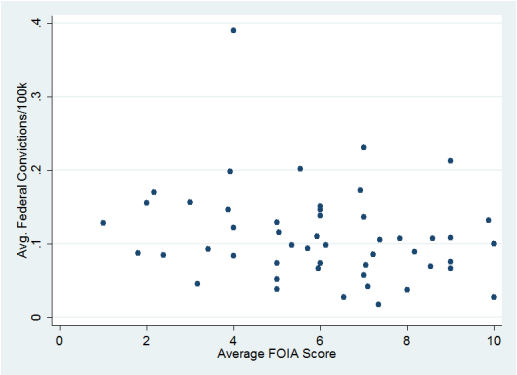
Consistent with the weak and mixed international evidence, a casual investigation of the relation between state FOIA laws and public corruption does not reveal any strong patterns. This is illustrated in Figure 1, which plots the average FOIA score in the state over the entire 1986-2009 period versus the average rate of corruption convictions of state and local officials and federal officials, respectively. There is a weak negative correlation in the cross section, and it is actually a bit stronger for federal convictions than for state and local convictions.

Figure 1: Average Convictions per 1000 residents and Average FOIA Score, 1986-2009

(a) State and Local



(b) Federal



There are a couple of things to take away from this preliminary look at the data. First, documents subject to state FOIA laws are primarily those that relate to the business of state and local officials. If strengthening state FOIA laws had any effect on corruption, we would expect to observe that effect primarily on these officials.

Because we do not expect state FOIA laws to affect federal convictions, the causality for the correlation with federal convictions must flow from corruption to FOIA. Figure 1 provides some evidence, albeit weak, to suggest that states that are otherwise less corrupt are more likely to adopt stronger FOIA laws. Hence, we need to control for other factors that affect the underlying propensity for corruption when analyzing the impact of these laws.

Second, the lack of a clear pattern in the cross-section for state and local convictions should not be surprising given the predictions of our reduced-form model. Suppose that strengthening FOIA laws both reduces corruption levels and increases the probability that corrupt acts are detected. The effects of these two changes on corruption conviction rates might largely offset one another in the long run. If this is the case, then we should be looking primarily for transitory changes in conviction rates around the time that FOIA laws are strengthened. It would be difficult to identify such changes using the average conviction rates plotted in Figure 1. However, if switching from weak to strong FOIA produces a transitory increase in state and local conviction rates, this could explain why the negative correlation that we see for federal conviction rates is not apparent for state and local conviction rates.

To detect the transitory changes in conviction rates associated with strengthening FOIA laws, we need to align the data in event rather than calendar time. Figure 2 plots the number of convictions of public officials per 100k residents as a function of the number of years since strong FOIA was enacted. The first panel represents convictions of state and local officials and the second convictions of federal officials. The diagram includes only those states which introduced a strong FOIA law during our period (1986-2009). The mix of states changes as they enter or leave our data period, with each state appearing in exactly half the years. For example, South Carolina enacted a strong FOIA law in 1988, the third year of our sample. It is therefore included in the calculations from $Year = -2$ to $Year = 21$.

Taking the two graphs together, there seems to be some change in state and local convictions around the time when stronger FOIA provisions were enacted, and whatever is driving this change has no apparent effect on federal convictions. We would generally expect any effect of state FOIA provisions on federal officials to be very indirect. Some evidence of misdeeds might be apparent in documents subject to state FOIA laws, but compared to the state and local officials, this would be a relatively small risk. Given this difference, any large and distinct changes in the conviction rates of federal officials would be worrisome. It would suggest that something else

was changing alongside FOIA that affected corruption more generally. The contrast between the two graphs is certainly suggestive of a FOIA effect, but some care needs to be taken before we draw any solid conclusions about these differences.

First, as noted above, the mix of states does change as we move through the timeline of the two graphs. In particular, New Jersey drops out of the sample near the point where the state and local conviction rate falls, and Indiana joins the sample near the point where the conviction rate jumps upward. These mix effects should not be allowed to drive our results. For this reason (as well as for general robustness considerations), all of our regression specifications will include state fixed effects.

Second, there seems to be a relatively consistent downward trend in both types of convictions. Since strong FOIA tends to persist once enacted (in fact, no states repeal strong FOIA in our sample), we need to control for the downward trend in corruption convictions to avoid attributing this general decline to FOIA. For this reason, we will also include year fixed effects in all of our regression specifications.

Third, the literature has identified a number of underlying characteristics that are known to impact corruption. Two of the most often mentioned factors are education and income. Since these factors vary within states over time, we need to be careful about their potential correlation with the enaction of strong FOIA. If, for example, states become more likely to strengthen their FOIA laws as their population becomes more educated, we might incorrectly attribute a change in corruption rates to a change in FOIA law, while in reality both are due to a change in education. To control for this possibility, our regression specifications include measures of education and income in each state in each year. Of course, we can never control for all possible determinants of the rate of corruption, but by controlling for those factors known to have a strong effect, we can limit the worries about omitted variable bias.

Finally, we observe only corruption convictions, not the actual number of corrupt acts. If, as we would typically expect, the enaction of strong FOIA both decreases the number of corrupt acts committed and increases the probability that any given corrupt act is discovered and prosecuted, the total effect on the number of convictions is theoretically ambiguous. If we assume that the behavioral response of corrupt agents is fixed in the short run, we can interpret the short-run effect of FOIA on corruption convictions as the pure conviction effect, and the long-run effect as the combination of the conviction effect and the response by agents. This response will include reducing the number of corrupt acts, but will also include avoidance behavior, as corrupt agents find alternative methods of avoiding detection through FOIA. Unfortunately,

it will be impossible to disentangle these two responses, even in the long run.

4 The Effects of FOIA

Encouraged by the movement in state and local conviction rates around the time of strong FOIA adoption, and reassured by the absence of a corresponding movement in federal conviction rates, we will now turn to a more robust analysis of the effects of FOIA. The key will be to deal appropriately with the confounders outlined above. Our first, and primary, analysis will consist of fitting a two-way fixed-effects regression specification. This specification allows us to adjust our estimates to account for any time-invariant differences across states and any state-invariant differences across time that would otherwise lead to biased estimates. In this analysis, we find a large positive impact of strong FOIA adoption on conviction rates, and a significant decline in this conviction rate over time. These findings are qualitatively consistent with the predictions of our reduced-form model and suggest the importance of investigating the timing of the effects of FOIA.

In section 4.2, following the reduced-form model above, we use the timing of the FOIA effects to try to disentangle the effect of FOIA on corruption from the effect on conviction. Under the assumption that conviction rates adjust more quickly than corruption rates, conviction rates more than double soon after the switch to strong FOIA, while corruption rates fall by more than half in the longer term.

4.1 Fixed-Effects Regressions

Moving beyond the simple analysis of mean conviction rates presented above, our primary method for identifying the relationship between strong FOIA laws and corruption convictions is the fixed-effects OLS regression,

$$ConvicRate_{st} = \mathbf{y}'_{st}\beta + \mathbf{x}'_{st}\lambda + \delta_t + \gamma_s + \epsilon_{st}, \tag{7}$$

where *ConvicRate* measures the number of corruption convictions per 100,000 residents, $\mathbf{y}$ is a vector of dummy variables that delineates time windows in the pre- and post-enactment periods for the strong FOIA laws, and $\mathbf{x}$ contains our controls: state income per capita and state-level educational attainment. The γ_s and δ_t terms denote state and year fixed effects. We will consider two cases, one in which we simply contrast the pre- and post-enaction estimates of the expected conviction rates, and

one in which we break the pre- and post-enaction timelines into 3-year windows and allow the estimates of expected conviction rates to differ by window.

In the 3-year-window specification, we exclude the window consisting of two years before and after the enaction of strong FOIA, including the year of enaction. We do this for two reasons. First, there may be some pre-response before strong FOIA is officially enacted, if the enaction is foreseen. We do not want to include those years in the "pre" period, because they are potentially affected by enaction. Two years should represent a reasonable time limit before which the enaction of FOIA would be unanticipated (or anticipated with enough uncertainty to ignore in practice). Second, implementation of a strong FOIA law is not instantaneous because the administration and courts must hash out exactly how the rules will be applied. Since this transition period may vary by state, we want to extend the enaction period to allow for all states to fully transition. Two years after the year of enaction should be a reasonable time frame to capture most of these transitions.

Table 2 presents the results of the regression analysis for four variants of the specification in (7). The first two columns contrast the conviction rates before and after the enaction of a strong FOIA law, for state and local officials and federal officials, respectively. For state and local officials, the conviction rates are significantly higher in years with a strong FOIA law. The difference is about .035 convictions per 100,000 residents per year, about half the mean level of convictions. For federal officials, there is no significant difference in conviction rates between years with strong FOIA laws and the years without, and the point estimate is very small. These initial results bolster the earlier evidence from our analysis of mean conviction rates. Allowing for state and year fixed effects and incorporating the controls does not alter the general nature of our findings.[12]

The third and fourth columns of Table 2 illustrate how the conviction rates change over time using the enaction year of strong FOIA as time zero. Column 3 presents the results for state and local officials. There is no consistent pattern in the years preceding FOIA. The estimated coefficients for the 3-year window dummies are not significantly different from each other, and there is no evidence of significant shifts from the average conviction rate in the 5-year window around the year that strong FOIA was enacted. However, in the 3 to 8 years after strong FOIA was enacted, there is a significant increase in conviction rates. The change is about .07 convictions

[12]Table A1 in the appendix replicates this analysis in a Fixed-Effects Negative Binomial model. The results are nearly identical, so we simply discuss the OLS results in the text.

per 100,000 residents per year, which is approximately the mean overall conviction rate. After this spike, the conviction rates fall back to the pre-enaction levels. Figure 3 illustrates the timing of these changes. Column 4 presents the results for federal officials. Again, there is no evidence of any significant changes in conviction rates for these officials and the point estimates are small. Strong FOIA laws are associated with a significant increase in conviction rates for state and local officials, and this increase persists for up to 8 years after the enaction is complete.

Before moving on we should briefly comment on the results for the controls. The estimated coefficient on the GDP per capita variable is positive and statistically significant for the state and local officials regressions. In contrast, previous studies have found that income or GDP per capita is negatively correlated with corruption. The reason for the difference in findings is not immediately apparent, and one could argue that it is difficult to say what sign we would expect for this variable. Perhaps poorer states lack the resources to fight corruption effectively and pay low wages to public officials. This might produce a negative relation between GDP per capita and convictions. On the other hand, a higher GDP per capita could provide increased opportunities for rent extraction. This might produce a positive association between the two variables.

The estimated coefficient on the variable measuring the state education level is not significant in regressions (1) and (3), but it is negative and statistically significant in regressions (2) and (4). The negative sign is consistent with the findings in the literature that education is negatively associated with corruption, perhaps because more educated citizens are better informed about corrupt activities and better able to take action against officials who engage in these activities (Glaeser and Saks 2006). But we would expect this effect to show up for the state and local officials if it shows up at all. Of course the standard error of the estimated coefficient in regressions (1) and (3) is relatively large, so zero and negative values are included in the 95% confidence interval. Thus we cannot reject the hypothesis that increasing education has a negative effect on state and local conviction rates that is of the same magnitude as the estimated effect for federal officials. Overall, it seems that the state/local drivers of corruption among state/local officials may differ from the state/local drivers of corruption among federal officials, an interesting question that we leave for future research.

4.2 Separating Conviction from Corruption

To separate the effect of FOIA on conviction rates from the effect on corruption rates, we need to relate the results from the fixed-effects regression analysis back to the structure of the model in section 2. To do so, we need to define the short run and the long run. We have no *a priori* basis on which to make this judgment, because the rate at which potentially corrupt officials alter their behavior is unknown. Fortunately, the estimates in Table 2 seem to fall nicely into three groups. This pattern suggests dividing the time around the enaction of strong FOIA into four distinct periods: a pre-period up to 2 years before strong FOIA is enacted; an enaction period including the year of enaction and the two years before and after enaction; a short run period from 3 to 8 years after strong FOIA was enacted; and a long run period 9 or more years after strong FOIA was enacted.

Table 3 repeats the analysis from Table 2 using the dummies that correspond to these periods. Because the comparisons in Equations (5) and (6) both include the conviction rate in the short run, this time window will form the base group for the analysis in this section. The initial two columns of Table 3 identify the differences between the corruption conviction rates in various time periods around FOIA adoption. The results in the first column are obtained by fixed-effects OLS regression identical to those in Table 2, but with different time windows. Those in the second column are obtained by weighting each observation by the population in that state/year. This specification may be more efficient in the presence of heteroscedasticity related to population size. The resulting estimates can be interpreted as the correlation for the "average" official in the sample, while those in the first column are better seen as the correlation for an official in the "average" state.

To use the results of these two specifications to separate conviction from corruption, we need to construct an estimate of the baseline conviction rate. The short run is our baseline period, so we calculate our estimate of the baseline conviction rate by averaging conviction rates over all the observations in the sample, while adjusting the observations that fall outside the short run period by applying the appropriate estimate from Table 3. This value is 0.131 convictions per 100,000 residents for the unweighted specification, and 0.109 convictions per 100,000 residents for the population-weighted specification.

In the final column of Table 3, we present the results for a fixed-effects negative binomial regression of the number of state and local convictions on the same covariates along with population. Using a negative binomial specification avoids the

complications of constructing a baseline conviction rate. Because the table reports the exponentiated coefficients (incident rate ratios), the values in the table can be used to directly compute the percentage change in the incidence rate of corruption convictions for a unit increase in the independent variable. In particular, if we subtract one from the reported coefficient for the Pre-Enaction and Long-Run windows and then multiply by one hundred in each case, we obtain the percentage change from the short-run baseline rate for these periods.

Under the assumptions of the reduced-form model in section 2, we can combine the results from Table 3 with the estimated baseline conviction rates (if necessary) to separately identify the effects of enacting a strong FOIA law on conviction rates and on corruption rates. This yields remarkably similar implications across the three different specifications. The enaction of a strong FOIA law leads to a substantial increase in the rate at which corrupt acts are convicted. Depending on the specification, the rate approximately doubles, or perhaps slightly more than doubles. If taken at face value, this obviously has important policy implications. States can substantially increase the probability that corrupt officials will be unmasked and prosecuted by enacting strong FOIA laws.

Of course we can expect those who engage in corrupt acts to alter their behavior in response to the increased risk of detection and prosecution. As they do, the conviction rates should decline from the elevated level that prevails in the short run. Assuming that all of the observed change in conviction rates is due to changes in the level of corrupt behavior, we see a drop in this behavior of approximately 50 to 70 percent. If we take these results seriously, then our analysis suggests an elasticity of supply of corruption, with respect to the probability of apprehension, of a little more than 1. In the long run, therefore, we should expect actual convictions to decline as the probability of conviction increases, but very slowly. Actual corruption, on the other hand, would decline much more strongly.

We have emphasized the deterrent effect of the increased probability of detection leading to a long-run reduction in corruption rates. An alternative (but not mutually exclusive) reading of our results is that corrupt officials are learning to alter their behavior in order to avoid detection under FOIA.[13] Maybe they avoid written records

[13]A number of popular press articles report that public officials alter their behavior in order to avoid FOIA laws. See, for example, "Government Uses Commercial Email and Texting to Avoid FOIA Laws," Huffington Post, August 22, 2009, available at http://www.huffingtonpost.com/peter-scheer/government-uses-commercia_b_265809.html, or "FL Official: I Don't Email Because of Open Records Laws," available at http://techpresident.com/short-post/fl-official-i-dont-email-because-open-records-laws, accessed June 13, 2011.

or destroy extant records. Such behavior would lead us to overstate the size of the deterrent effect, and without an independent measure of avoidance behavior we cannot disentangle these two. For most reasonable models of avoidance, however, corrupt officials would adjust along both dimensions. After all, avoidance must be costly, or they would be doing it already, and the additional costs of avoiding detection would make some otherwise attractive corrupt acts become unattractive. The degree to which we believe the estimates above overstate the deterrent effect of FOIA will depend on how costly we believe avoidance to be.

5 Interpretation and Conclusions

It is relatively well established that an effective and free press has an important role in keeping potentially corrupt officials in line. Several recent examples of the press successfully playing this watchdog role have featured investigative journalists employing some version of freedom of information laws. Despite the intuitive connection between open government laws and watchdog journalists, previous research has failed to find a very solid connection between such laws and corruption. In fact, some studies have even concluded, in contrast with the most straightforward economic theories of crime, that the introduction of the increased scrutiny of open government laws led to an *increased* rate of corruption.

In this paper, we argue that such findings are an artifact of confounding two effects of the policy change: an increase in the probability of conviction and a decrease in the probability of corruption. If we observe an increase in the amount of corruption detected after the adoption of open government laws, we should not be surprised. We would expect increased transparency to make it more likely that the corrupt acts committed in the past will come to light. This should not be interpreted as evidence that the underlying level of corruption has increased. Indeed, it is precisely the outcome that we would hope for given a policy objective of reducing corruption. If the probability of detection and conviction increases, then we should ultimately see a decline in the probability of corruption. Making some assumptions about the rate at which officials adjust their corrupt behavior, we can disentangle these two effects.

Using our model as a guide, we assess the impact of switching from a weak to a strong state-level FOIA law on corruption convictions for state and local government officials. State corruption conviction rates rise after the switch to strong FOIA, with no concomitant change in federal convictions. Under a variety of econometric

specifications, the short-run effect is an approximate doubling in the probability that a corrupt act is detected and convicted. Corruption conviction rates decline from this new elevated level as the time since the switch from weak to strong FOIA increases. If the decline is solely due to officials adjusting their behavior, then it implies that they decrease the rate at which they commit corrupt acts by up to 70 percent.

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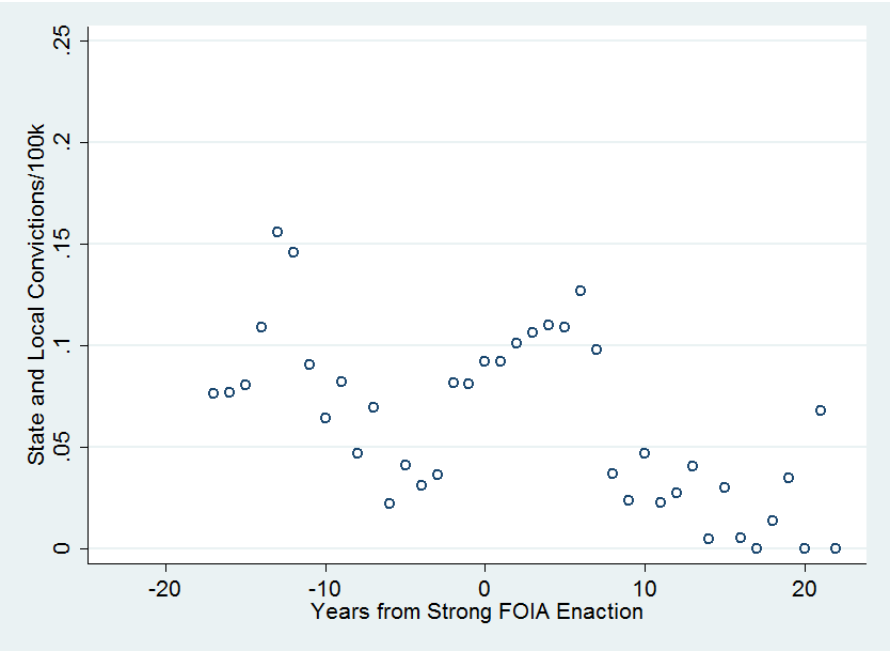
Figure 2: Convictions per 100,000 residents for the states that switched to strong FOIA, before and after the switch

(a) State and Local



(b) Federal

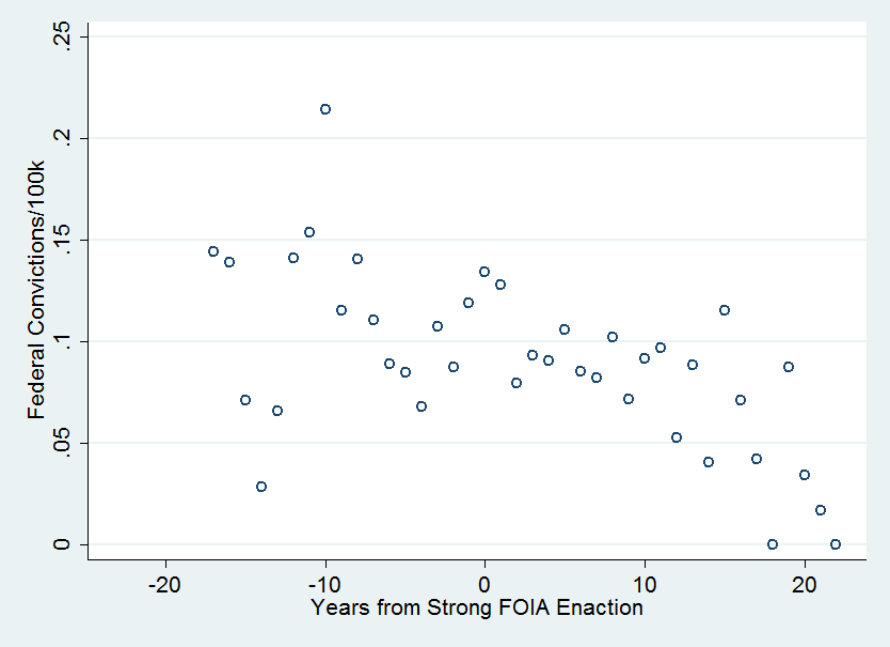


Table 2 FE-OLS of Conviction Rates

Dependent variable	sl/100k	fed/100k	sl/100k	fed/100k
	(1)	(2)	(3)	(4)
12+ Years Before			−0.013	−0.054
			(0.067)	(0.106)
9-11 Years Before			−0.036	−0.016
			(0.040)	(0.084)
6-8 Years Before			−0.029	0.051
			(0.036)	(0.064)
3-5 Years Before			−0.014	−0.012
			(0.025)	(0.049)
Strong FOIA	0.035*	−0.014		
	(0.018)	(0.025)		
3-5 Years After			0.062*	−0.017
			(0.035)	(0.038)
6-8 Years After			0.077	−0.026
			(0.046)	(0.024)
9-11 Years After			−0.006	−0.016
			(0.044)	(0.043)
12+ Years After			−0.020	−0.011
			(0.040)	(0.064)
Income/Cap	0.038**	0.005	0.034*	0.004
	(0.017)	(0.005)	(0.017)	(0.004)
Pct. HS Grad	0.010	−0.008*	0.011	−0.009*
	(0.013)	(0.004)	(0.013)	(0.005)

Notes: Regressions include every state that enacted a strong FOIA law between 1986 and 2009 (s=12, t=24). Corruption convictions are from the TRACfed database (1986-2009) and reported in convictions per 100,000 residents. All regressions include state and year fixed effects, and standard errors, in parentheses, are clustered by state. * and ** represent significance at the .10 and .05 levels, respectively.

Figure 3: Estimated Difference in the Base Conviction Rate for State and Local Officials Before and After Strong FOIA Enaction

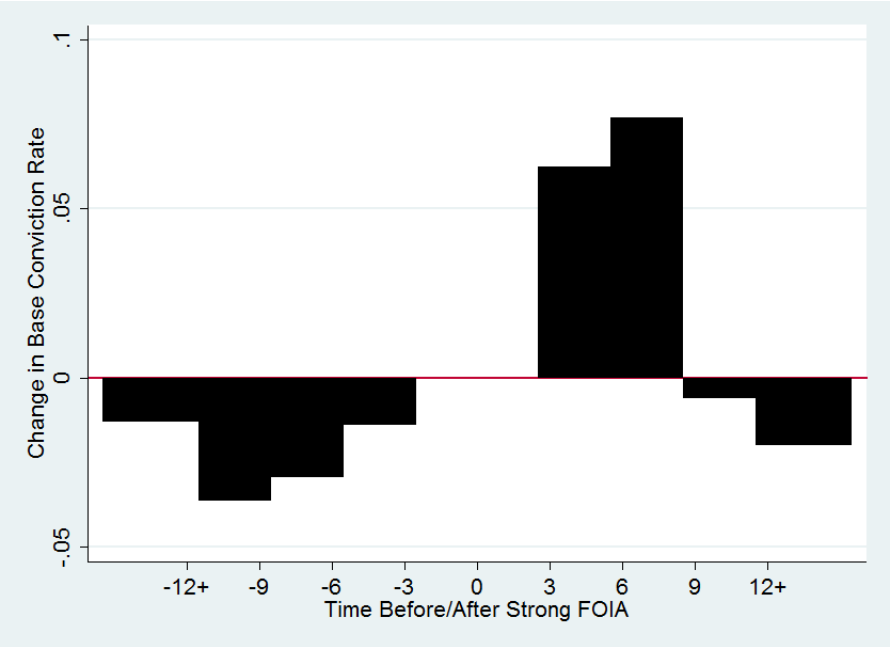


Table 3 Identifying Conviction versus Corruption using Short-Run and Long-Run Changes

Dependent variable	sl/100k	sl/100k Pop. Weighted	sl Neg. Bin.
	(1)	(2)	(3)
main			
Pre-Enaction	-0.090^{*}	-0.063	0.492^{**}
	(0.049)	(0.041)	(0.181)
During Enaction	-0.069^{*}	-0.010	0.960
	(0.039)	(0.034)	(0.216)
Long Run	-0.084^{*}	-0.069^{***}	0.437^{***}
	(0.045)	(0.024)	(0.109)
Income/Cap	0.034^{**}	0.009	1.084^{**}
	(0.016)	(0.010)	(0.044)
Pct. HS Grad	0.010	-0.001	0.922^{**}
	(0.012)	(0.007)	(0.034)
Population (M)			1.172^{***}
			(0.060)
$\overline{C}_{Short}$	0.131	0.109	n.a.
$\frac{\overline{C}_{Short}}{\overline{C}_{Pre}}$	3.19^{*}	2.37	2.03^{**}
$\frac{\overline{C}_{Long}}{\overline{C}_{Short}}$	0.36^{*}	0.37^{***}	0.44^{***}

Notes: Regressions include every state that enacted a strong FOIA law between 1986 and 2009 (s=12, t=24). Corruption convictions are from the TRACfed database (1986-2009). All regressions include state and year fixed effects, and standard errors, in parentheses, are clustered by state. Specification 1 is FE-OLS. Specification 2 is weighted by average state population. The coefficients in specification 3 are exponentiated, so they can be interpreted as marginal effects of a unit increase on the incidence rate of corruption convictions. *,**, and *** represent significance at the .10, .05, and .01 levels, respectively, where the null hypothesis in the negative-binomial specification (3) is that the exponentiated coefficient is equal to 1 (no difference among time-frames).

Table A1 Replication of Table 2, Fixed-Effects Negative Binomial Model

	sl	fed	sl	fed
main				
12+ Years Before			1.405	0.733
			(0.825)	(0.352)
9-11 Years Before			1.152	1.391
			(0.525)	(0.436)
6-8 Years Before			0.581	1.398
			(0.218)	(0.377)
3-5 Years Before			0.585*	0.923
			(0.177)	(0.197)
Strong FOIA	1.658**	0.976		
	(0.429)	(0.171)		
3-5 Years After			0.807	0.832
			(0.210)	(0.171)
6-8 Years After			0.726	0.767
			(0.240)	(0.206)
9-11 Years After			0.224***	0.821
			(0.110)	(0.296)
12+ Years After			0.260***	0.756
			(0.150)	(0.338)
Population (M)	1.084*	1.073***	1.159***	1.083***
	(0.050)	(0.028)	(0.059)	(0.031)
Income/Cap	1.125***	1.053**	1.081*	1.058*
	(0.043)	(0.029)	(0.046)	(0.032)
Pct. HS Grad	0.907***	0.937***	0.908***	0.926***
	(0.038)	(0.024)	(0.036)	(0.024)

Notes: Regressions include every state that enacted a strong FOIA law between 1986 and 2009 (s=12, t=24). Corruption convictions are from the TRACfed database (1986-2009) and reported in convictions per 100,000 residents. All regressions include state and year fixed effects. The coefficients are exponentiated, so they can be interpreted as marginal effects of a unit increase on the incidence rate of corruption convictions. *,**, and *** represent significance at the .10, .05, and .01 levels, respectively, where the null hypothesis is that the exponentiated coefficient is equal to 1 (no difference among time-frames).