

## ODMAP: FOIA Request for Information

# Is a participating agency required to comply with a Freedom of Information Act request for ODMAP data?

### Response

Maybe. For an ODMAP participating agency to answer this question, it must determine three things:

1. What law applies to the request for information?
2. Does the applicable law require disclosure of this data?
3. What constitutes the agency's ODMAP data?

**What law applies?** The federal Freedom of Information Act (FOIA) applies only to the public's right to request access to records from a federal agency.<sup>1</sup> Assuming that a request for ODMAP data is made to a state or local entity, that state's freedom of information law, rather than FOIA, will govern.<sup>2</sup> Therefore, the answer to this question will almost always be that the law of the state where the participating agency is housed will govern disclosure of ODMAP information in response to a Freedom of Information Act request.

**Does the applicable state or local law require disclosure of the agency's data?** To answer this question, the agency should consult with its attorney. Each state's freedom of information law is different, and an exploration of each state law is beyond the scope of this document.

If an agency determines that applicable state or local laws require disclosure, the agency can only share data that is "owned" by the agency.

**What data does the agency "own?"** According to the ODMAP Policies and Procedures: (1) a participating agency retains ownership of the data it reports to ODMAP; and (2) a participating agency cannot download another agency's data unless it has "permission [from] or a data sharing agreement [with]" the other agency.<sup>3</sup> Therefore, only the overdose incident information reported to ODMAP by the participating agency is subject to a Freedom of Information Act request. Other incident information displayed in the National Map is not subject to the request.

### Definitions

**National Map**—The data visualization area of ODMAP where overdose incident information is plotted on a nationwide electronic map. The area was called Level 2 prior to the release of ODMAP Version 4.0 in January 2021. Not all ODMAP users can access this area.

**Participating agency**—An agency registered with the Washington/Baltimore HIDTA to use ODMAP. Participation in ODMAP is available at no cost to federal, state, local, and tribal law enforcement, other licensed first responders, criminal justice personnel, emergency rooms and hospital personnel, and other public health entities serving the interests of public safety and public health.

<sup>1</sup> <https://www.foia.gov/faq.html>.

<sup>2</sup> State freedom of information laws go by a number of names, including "sunshine laws," "public records laws," and "right to know laws."

<sup>3</sup> Washington/Baltimore High Intensity Drug Trafficking Areas Overdose Detection Mapping Application Program, ODMAP Policies and Procedures, at 5 (revised March 2021), <http://www.odmap.org/Content/docs/training/general-info/ODMAP-Policies-and-Procedures.pdf>.

### PRACTICE TIP

In most cases, state freedom of information law will govern the determination. Moreover, only the information a participating agency submits to ODMAP is potentially subject to the request.