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## **Analysis: States Steadily Restricting Info**

By ROBERT TANNER

AP National Writer

States have steadily limited the public's access to government information since the Sept. 11, 2001, terrorist attacks, a new Associated Press analysis of laws in all 50 states has found. Legislatures have passed more than 1,000 laws changing access to information, approving more than twice as many measures that restrict information as laws that open government books.

Some things your government doesn't have to tell you about:

- The safety plan at your child's school, if you live in Iowa.
- Medication errors at your grandparent's nursing home in North Carolina.
- Disciplinary actions against Indiana state employees.

The horror of the attacks spurred a wholesale re-examination of information that could put the country in danger, and the state actions roughly mirror those on the federal level. Federal agencies responded by shutting down Web sites, pulling telephone directories and rethinking everything from dam blueprints to historical records.

In statehouse battles, the issue has pitted advocates of government openness - including journalists and civil liberties groups - against lawmakers and others who worry that public information could be misused, whether it's by terrorists or by computer hackers hoping to use your credit cards. Security concerns typically won out.

The AP discovered a clear trend from the Sept. 11 attacks through legislative work that ended last year: States passed 616 laws that restricted access - to government records, databases, meetings and more - and 284 laws that loosened access. Another 123 laws had either a neutral or mixed effect, the AP found.

"What these open government laws do is break down that wall of government secrecy so that everybody knows what's going on," said Lucy Dalglish, executive director of the Reporters Committee for Freedom of the Press. "A democracy can only function if we have information. You can only have oversight of government if you have information."

Associated Press reporters in every state, often with help from their local press associations, tracked the government access bills introduced since the World Trade Center towers and Pentagon were hit by hijacked planes.

In every state, reporters tallied bills that were proposed each year, and then examined the laws that passed. They assessed the impact of each new measure and rated it as loosening existing limits on public access to government information, restricting the limits, or neutral.

While fear of another terrorist attack drove many new proposals, it wasn't the only motivator. Concerns about identity theft, medical privacy and the vulnerability of computerized records have sparked many pieces of legislation, too.

Lawmakers say they are recalibrating the balance between information that could be used against society and what society at large needs to know.

"Since Sept. 11, we're looking at information like plans for our nuclear plants, the records of our bridges and transportation systems. All of the critical information that is out there that we don't necessarily want to put in the hands of a terrorist," said New York state Sen. Nick Spano, a Republican who had proposed tightening legislation soon after the attacks.

"It's a very difficult balance between the public's right to know and the public's right to security," Spano said. A different security measure ultimately became law, limiting access to information about infrastructure from airports to cellular phone systems. Last year, Spano authored a law that strengthened public access by setting a strict deadline for state agencies to respond to requests for information.

The give and take of a legislature usually forces changes to such bills - like a measure proposed last year in Oklahoma, where freshman state Sen. Charles Wyrick, a Democrat, sought to completely exempt the state's new Department of Homeland Security from the Open Meetings Act and Open Records Act.

"I don't know why all of a sudden the holy grail of security and safety is now closing records," Mark Thomas, head of the Oklahoma Press Association, said after the bill was introduced. "It seems to me we would be more secure if we knew what was going on around us. ... Apparently there are those in government who want to close all these records and say, 'We'll keep you safe, trust us.'"

Negotiations brought a compromise. The law that passed allowed the department to keep communications between the agency and the federal government confidential, along with security plans for private businesses.

"We had to fight that out, and basically it ended up being an equal distribution of unhappiness," Thomas said.

Still, the numerical data shows which side got more out of negotiations overall: The AP analysis of 1,023 new laws dealing with public access to government information found that more than 60 percent closed access. Just over a quarter created new avenues of access. The rest had a neutral effect, often through technical changes to existing laws.

Those laws emerged from just over 3,500 bills. Often, several legislators interested in a topic will each introduce a bill knowing that only one is likely to pass. In some states, the same legislation is introduced in both House and Senate chambers to speed action and build support.

Across more than four years, 36 states passed more restrictive laws than laws that loosened access; seven states passed more laws that eased barriers to access; seven states passed equal numbers. The analysis did not attempt to quantify the impact of larger, sweeping laws versus smaller modifications.

The AP analysis also did not study legislation prior to the Sept. 11 attacks, though observers say the changes have been obvious.

"What we see nationwide is states really backing away from their open access laws," said Fred H. Cate, an Indiana University law professor who studies privacy and technology. Security threats are real - but some lawmakers are just "taking advantage of the public security tide," he said.

The law in Iowa requires that schools draft emergency response plans, but bars them from the public. In Indiana, legislators agreed to keep disciplinary actions against state employees secret - except when they are suspended, demoted or discharged.

In North Carolina, new advisory committees set up to examine medication errors in nursing homes keep their meetings and records confidential, though the medication error rates found in separate home inspections that exceed a higher, federal standard can be accessed through the federal government.

North Carolina, like other places, also took steps to open access, requiring local and state governments to more quickly provide details about government incentive packages to lure business.

Elsewhere, Oregon opened records on child abuse in cases involving a child who is killed or seriously hurt; South Carolina lawmakers required the governor to open his cabinet meetings; California voters approved an amendment to the state constitution requiring that the state's laws on open meetings and open records be broadly interpreted. After the amendment passed, Gov. Arnold Schwarzenegger made public his appointment calendar and those of two of his top aides.

Lately, privacy worries are starting to trump security fears.

"The great trend out there - that sweeps across any record - is privacy," said Charles Davis at the Freedom of Information Center in Missouri. "There's a push by government that every time Joe Citizen's name is mentioned in a government document, it's an inherent threat to Joe Citizen's privacy if that document is released."

Just this month, Minnesota Gov. Tim Pawlenty announced a new government-wide effort to target identity theft, barring access to driver's licenses, phone records and Social Security numbers. No longer, the governor said, should there be a presumption that government information is public. "That's backwards," he said.

Open government advocates disagree. The way they see it, if Pawlenty is successful, information that used to be public in Minnesota will soon be unnecessarily locked away.

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## **How States Are Changing Info Access**

A look at the numbers from an Associated Press analysis of public information laws in all 50 states. AP reporters tallied proposals and laws since Sept. 11, 2001, that sought to change the public's access to government information and meetings:

Bills proposed: 3,505.

New laws passed: 1,023.

Laws that restricted public access to government information: 616.

Laws that loosened access: 284.

Laws that were neutral or mixed: 123.

State with the most new laws: California, 122 new laws - 66 restricted access and 56 loosened access.

States with the fewest new laws: Both Kentucky and Wisconsin had only one new law - both restricted access.

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## Agencies Missing FOIA Deadlines, AP Finds

By MARTHA MENDOZA

AP National Writer

Many federal agencies fall far short of the requirements of the Freedom of Information Act, repeatedly failing to meet reporting deadlines while citizens wait ever longer for documents, an Associated Press review has found.

Requests for information ranging from historical records to federal contracts usually take months and sometimes take years to be filled; most departments missed the Feb. 1 deadline to send legally required annual reports to the Justice Department (and many still haven't been submitted) and the Justice Department hasn't produced an annual summary of FOIA reports for two years.

"Federal FOIA is the water torture. It's just drip, drip, drip. You wait and you wait and you wait," said Charles Davis who heads the National FOI Coalition.

The Freedom of Information Act, signed 40 years ago by President Johnson, dictates that federal records must be shared with the public unless they involve national security or private information about an individual or business.

Johnson's statement at the signing - "A democracy works best when the people have all the information that the security of the Nation permits" - has been echoed repeatedly by lawmakers in both parties in recent years, who have updated the law periodically with deadlines and restrictions to prompt quicker responses.

But an Associated Press analysis of about 250 annual FOIA reports submitted to the Justice Department between 1998 and 2005 found that:

-Backlogs are increasing at most agencies. Overall, the total number of requests pending at the 15 executive departments at the end of Fiscal Year 2004 was 147,810, a 24 percent increase over the previous year. Nine of the 15 federal departments reported an increase in their backlogs from Fiscal Year 2003 to Fiscal Year 2004.

-Many backlogs are lengthy. The most recent reports available from the 50 worst laggards show the median wait for a request to be handled ranges from about three months to more than four years, depending on the agency. The slowest federal agency is the National Archives, where officers explained most of their requests, pending for an average of 1,631 days, have to be reviewed by the originating agency for declassification before they can be released.

-Agencies involved with national security are clamping down on the amount of information they release to the public. The FBI, CIA and Defense departments, all agencies that have considerable investigative branches, again reduced the percentage of requested information released in full in 2005, continuing a trend dating back at least seven years. The Justice Department, however, showed a slight increase in the amount of information it released in full for the first time since the 2001 terror attacks.

-A full month after the Feb. 1 deadline, about 30 percent of federal agencies and departments required to submit annual FOIA reports to the Justice Department had failed to do so. Those with late reports included the Department of Veterans Affairs, the Social Security

Administration and the Department of Health and Human Services which, all together, received about 88 percent of all FOIA requests in the country in 2004.

Paul McMasters, ombudsman of the nonpartisan First Amendment Center and one of the nation's leading authorities on freedom-of-information issues, said Congress tried to remedy the lagging response times in 1996 by extending the amount of time agencies have to respond, from ten to 20 days.

He said that remedy seems to have backfired, prompting agencies simply to delay even longer. In addition, because there are no consequences for missing FOIA deadlines, McMasters said few FOIA directors seem to take the legal requirements seriously.

"There is absolutely no incentive for federal government employees to act with any sense of urgency on FOIA requests, and there are every sort of incentive to delay and delay," he said. "Those incentives are a culture of secrecy that has always existed in government, from 40 years ago when FOIA was passed to the present time."

FOIA does not require agencies to release information within a certain amount of time. The law does, however, mandate that agencies respond to requests in some way within 20 days. These responses often come in the form of a postcard acknowledging that a request has been received.

Actual processing often takes much longer. The most recent figures available show that a third of Cabinet departments had at least one agency where requests were pending for more than a year.

Even requests that are stamped "expedited" based on an exceptional need or urgency can lag for many months. The Justice Department's Office of Information and Privacy, which is in charge of administering FOIA across the federal government, kept an expedited request pending for 185 days last year.

Daniel Metcalfe, who directs the Justice Department's Office of Information and Privacy, said that when a request is expedited it heads to the front of the line. But complicated requests can take a long time to complete, he said.

"Even though the agency is trying its hardest to process the request as soon as practicable, it could take a long time because of the scope, volume or complexity of what is being sought."

Congress introduced the "Faster FOIA Act" last spring, and President Bush issued an executive order in December, calling on agencies to take several consumer-friendly steps. Among them: streamlining the handling of requests under the FOIA and appointing senior officials to monitor compliance with the law.

To date all 15 cabinet level agencies have appointed chief FOIA officers as required, although only seven of those agencies appear to meet Bush's specific requirement that these appointees be "at the Assistant Secretary or equivalent level."

Bush also ordered agencies to streamline the handling of requests under the FOIA and appointing senior officials to monitor compliance with the law.

But Bush's directive stopped short of modifying a 2001 policy issued by then-Attorney General John Ashcroft requiring agencies to carefully consider national security, effective law enforcement and personal privacy before releasing information. Ashcroft cited security concerns in the wake of the Sept. 11 attacks as the reason for the changes to open government laws.

"The Bush-Cheney Administration sent a powerful message government-wide with the Ashcroft FOIA policy in 2001," said Sen. Patrick Leahy, D-Vt., a leading FOIA reform advocate who has several bills pending in Congress to modify the law.

"That shifted the upper hand in FOIA requests from the public to federal agencies. The new policy says, in effect, 'When in doubt, don't disclose, and the Justice Department will support your denials in court.' It undermines FOIA's purpose, which is to facilitate the public's right to know the facts, not the government's ability to hide them," he said.

His colleague, Sen. John Cornyn, R-Texas, said "more remains to be done to ensure that American citizens have access to the information they need and deserve."

Cornyn is pressing for additional funding to address backlogs, which he said will "speed the rate at which information is given to the public."

In its review, the AP found that in 2005, in addition to increasing backlogs, many agencies decreased the amount of information they were willing to release in full. FBI authorities gave just six out of every 1,000 FOI applicants everything they asked for, down from 50 out of every 1,000 in 1998. The CIA has seen a similar, steady decline: just 11 percent of the FOIA requests processed at the CIA were granted in total in 2004, down from 44 percent in 1998.

Washington-based attorney Scott A. Hodes, who led the FBI's Freedom of Information litigation unit from 1998 to 2002, said there's an institution-wide inclination to avoid complying with the law.

"It doesn't surprise me that most responses are late, and that they tend to deny a lot. Even though your higher level administration officials will say they like FOIA, there's a general dislike of FOIA," he said.

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## **Citizens Use Open Records, Expose Missteps**

By DENA POTTER  
Associated Press Writer

CHESTERFIELD, Va. (AP) -- Three words caught Brenda Stewart's attention: "by private plane." When she read that phrase in her local newspaper - describing how Chesterfield County Administrator Lane Ramsey broke off a vacation and came home because a county official was arrested for sex crimes - Stewart couldn't help but wonder how much the plane ride cost.

An open records request followed, and she soon discovered that the county paid more than \$18,000 for the private charter from Kansas to Virginia.



AP Photo/LISA BILLINGS

"Even I did not have an idea it would be that expensive," Stewart said. Ramsey has since reimbursed the county for the flight, plus interest.

Stewart, 62, a retired federal worker, is one of many citizens who have used the Freedom of Information Act to uncover what government officials wish would stay buried in stacks of expense sheets and legal documents.

"You cannot hold officials accountable unless the public is aware of what they're doing," Stewart said.

Stewart makes it her business to know what her local officials are doing, gathering volumes of documents on how taxpayer dollars are spent and attending most board of supervisors, school board and planning commission meetings in this Richmond suburb.

She got involved in county issues after retiring from the Department of Defense in 1998.

Her neighbors asked her to join their fight against a subdivision proposed for their community. From there, they took on a special events business in the neighborhood. Then it was fighting against a plan to build two county high schools, battling with a telecommunications company installing fiber optic lines on private property, and arguing against government use of eminent domain to seize property for private development

"Those of us who send our taxes to government at any level - local, state or national - have a right to expect responsible spending of our money," she said. "I don't believe we're getting that in many cases."

In 2004, Lee and Paulette Albright found improper use of state-issued credit cards - including \$12,000 for an African safari - after they sought records on why the state Department of Game and Inland Fisheries ended public tours at a fish hatchery near their Nelson County farm. Two agency officials resigned over the scandal.

Nancy Frantel, a substitute teacher and former Walt Disney World manager, had environmental concerns about a subdivision proposed in Chesterfield County. A few hours after requesting records from the state Department of Mines, Minerals and Energy, she had information showing hundreds of Civil War-era mines underneath the site where more than 100 homes would be built.

Frantel lobbied for legislation requiring developers or homeowners to disclose if homes are built on abandoned mine sites. The General Assembly passed the bill this month and sent it to Gov. Timothy M. Kaine.

"It's a matter of being put in a position where you get a feeling that something's not quite right and, as a normal citizen, just saying, 'Let me look into this,' and then you discover there's so much more than you ever imagined," Frantel said.

Frosty Landon, executive director of the Virginia Coalition for Open Government, said he wished more citizens took advantage of their right to review public records.

"A lot of citizens just don't know there is a Freedom of Information Act and don't need to know it until they get interested in a zoning issue down the street or a change of school attendance lines or something as mundane as proposed increases in garbage fees," Landon said.

Stewart said she's probably spent thousands of hours working on her projects, but it's her way of giving back to the community where her family has lived for generations.

"We ordinary citizens do have a role to play," Stewart said. "While individually it isn't a big role, if many of us get together and do our little bit, we can make a difference."

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## **AP CEO Curley Discusses Sunshine Week**

Tom Curley, The Associated Press' president and chief executive officer, has been an outspoken advocate in the campaign against government secrecy. In question-and-answer form, he discussed this year's Sunshine Week initiative spearheaded by media organizations.

**Q: Sunshine Week 2005 was declared a success in initiating a national dialogue in the United States and shedding light on the public's right to open government. How does 2006 compare with 2005, and how do you view last year in terms of freedom of information?**

A: Last year's effort was impressive. Participation was far higher than expected. Editors' efforts to show how freedom-of-information laws benefit the public were thoughtful and specific. Many focused on everyday issues that impacted local lives. Most important, the dial moved. Polls showed support for freedom of information rose.

**Q: The first national Sunshine Week helped to energize congressional efforts to introduce strengthened Freedom of Information Act laws. Do you think President Bush's executive order for federal agencies to improve their compliance will play any role in that legislative process?**

A: We must understand we are engaged in a long-term battle. Freedoms must be won anew by each generation. Crosscurrents in public and government thinking linger from the attacks on the United States in 2001. Signs of progress include the executive order to improve compliance, media industry engagement in open-records issues and at least some increased support. Unfortunately, an absurdly high amount of government information is being classified.

**Q: As a result of an Associated Press lawsuit, the Pentagon this month released documents containing the names of detainees at the U.S. military prison at Guantanamo Bay. Why did the AP pursue this case?**

A: Legal support for public trials dates back at least to 1188. The public has a right to know about the people being held, whether or not they are a threat, the nature of their alleged crime, whether their government is providing appropriate justice. Military and civilian codes provide rights to fair trials, including notice of charges and humane treatment of incarcerated. The nature of the charge doesn't diminish the rights of the accused or provide additional powers to the state.

**Q: Should journalists have access privileges for government records that do not extend to the public? For instance, in Ohio, ordinary citizens do not have access to lists of people who receive permits to carry concealed weapons, but according to the law, the media does.**

A: That law in Ohio, and laws in other states, resulted from odd compromises late in the legislative process. We're much better off when our rights match the public's rights.

**Q: Is there enough of a direct dialogue between the public's intermediary - the media - and the government's gatekeepers of information?**

A: We've done a much better job recently shining the spotlight on access. The high-profile cases where journalists have been thrown in jail or threatened with jail put the issue on the

front page. The courts' attitudes are unmistakably chilly. We've got a lot of work to get the public behind us.

**Q: Do the media have clear guidelines, that the public should be aware of, for when it should bring to light a government access problem or when to work behind the scenes with federal, state or local authorities to resolve a complex issue?**

A: We routinely hold information until we can be sure of its accuracy, value or context. I don't think we've explained to the public how hard we work to be sure. Of course, each mistake undermines our credibility. The guidelines on when to publish or when to wait should be clear within each organization and communicated when appropriate to the public. We must fight the accuracy battle each day with every word we write.

**Q: How does new technology affect the media's relationship with the U.S. military in the resolution of freedom of information disputes?**

A: News circles the globe in an instant, and the military and media are tested as never before to get the facts right from the beginning. We have the capacity to put a story on the air before we know what the story is. Restraint should be exercised for the sake of accuracy and context. Nonetheless, most problems arise for all the old and wrong reasons: An official wants to put the best spin on a situation or someone puts being first with a story ahead of first being right. Our complaints with the military tend to be more specific - a particular official ignoring long-established procedures or overreaching.

**Q: Prosecutors and defense lawyers have used the power of subpoena to demand reporters' notes in a couple of recent high-profile legal cases, including the jailing of New York Times reporter Judith Miller and the Wen Ho Lee case - which involves an AP reporter - in which the defense has asked journalists to reveal their sources. Are these aberrations that are confined to an unusual set of legal circumstances, or do those cases represent a judicial trend to limit the use of government sources?**

A: The trend is unmistakable and chilling. We must do our part by limiting when we go off the record, and we must fight to get access to information the public needs. Government by secrecy doesn't make for enduring democracy. Judges will be more sensitive to the public's access when they see the potential for public harm from secrecy.

**Q: Has the role of the press as a watchdog of government for the public taken a beating in the current political climate in America?**

A: History shows that there are pullbacks in times of war, and that's understandable. We should stick to our principles and make the case to the public.

**Q: Are efforts by the media to become more transparent so the public better understands the journalistic process actually working?**

A: Research by the Pew Charitable Trust and the Freedom Forum show impressive upticks. That should inspire all of us to seize the moment.

**Q: The right of a citizen to privacy is increasingly being pitted against the public's right to know. How does that affect the media's relationship with the public?**

A: A citizen's privacy rights should be understood and respected. The rules are nearly always clear about when information crosses the line from private to public. When it's not clear, editors are very careful to debate when and what to publish. Our battle is keeping the public's business from being conducted behind closed doors.

**Q: The Associated Press daily faces government hostility to its newsgathering efforts globally. How are its FOI efforts in the U.S. helping to cope with that?**

A: We work in a lot of places where media are feared more than guns. Interestingly, our efforts in the U.S. are seen as a sign of strength. We've heard from journalists in many countries that they have been encouraged to ask the tough questions or to report when information is being concealed. We face a difficult era. The Rose, Orange and Tulip Revolutions in former Soviet republics appear to have spooked unelected regimes to intensify efforts at repression. The courage of journalists - AP and others - working in these places should inspire all of us.