

Northeastern States

New Hampshire

The Portsmouth Herald

http://www.seacoastonline.com/news/special/3_11special2.htm

N.H. tries to balance open government with civil liberties

By Katharine Webster
Associated Press Writer

CONCORD, N.H. - Maybe it's New Hampshire's historic suspicion of big government. Maybe it's the state's fierce dedication to individual rights, summed up in the motto, "Live free or die."

Whatever it is, New Hampshire has mostly resisted a national trend toward greater government secrecy and less individual privacy since the terrorist attacks of Sept. 11, 2001.

Since then, federal and state laws have closed government proceedings and records while subjecting residents to greater scrutiny _ all in the name of homeland security.

But in New Hampshire, the Legislature and courts often have enhanced the public's right to scrutinize government while protecting individuals from greater government intrusion into their private lives. When public access to government records has been limited, the restrictions usually have been to protect information about individuals collected by government: for example, the names, addresses and medical records of people filing worker's compensation claims.

"Unlike what seems to be happening at the federal level, New Hampshire legislators by and large agree with the old saying that, 'Those willing to give up a little liberty for a little security deserve neither security nor liberty,'" said lobbyist and former legislative adviser Curtis Barry, citing Benjamin Franklin.

One notable exception was an update to the state's Right to Know Law passed in 2002 that allows government bodies to go into closed meetings to discuss "security," then vote to keep the minutes secret indefinitely.

Rep. Jim Splaine, D-Portsmouth, said the change created a huge loophole without making residents safer. Now state agencies can refuse to release information about bridge safety or plans to deal with a nuclear emergency.

Local governments can abuse the loophole as well, he said.

"Under this law, police departments, fire departments can use this exclusion for almost everything, if they want to," Splaine said. "They could refuse to tell you about their plans for covering a local parade on the basis of, 'We can't release that information because of security concerns,' so there's a lot of potential for abuse."

Jim Van Dongen, spokesman for the state Bureau of Emergency Management, said the state delivers calendars to every address within a 10-mile radius of the Vermont Yankee and Seabrook nuclear power plants with emergency information such as evacuation routes.

But since 9-11, the agency has stopped routinely giving out the entire emergency response plan. When a reporter for The Keene Sentinel asked for the Vermont Yankee plan, she was told she could read it and take notes, but could not have a copy, he said.

"The plan is and always has been public information, but since September 11 we're a little more cautious about how that information could be put out," Van Dongen said. "It's not top secret _ it wouldn't tell a terrorist how to attack the plant _ but the information in aggregate could be used by terrorists in a scheme to kill a lot of people."

Another homeland security law passed in 2002 actually expanded protection for civil liberties, said Claire Ebel, executive director of the New Hampshire Civil Liberties Union.

Ebel served on a task force after 9-11 that evaluated existing laws and model homeland security legislation promoted by the federal government. She said many task force members were horrified to realize how much power the governor already had: to declare a state of emergency or martial law; detain people, quarantine them or place them under house arrest; and require people to be vaccinated or receive medical treatment in violation of their personal or religious beliefs.

The updated law still allows the state to demand disclosure of medical information during a bioterrorism emergency, such as the names of people with a particular infectious disease, and to require people to submit urine and other samples for testing.

But it allows people to challenge such orders in court and severely restricts the state's use of medical information. It also requires the state to disclose summary statistics, such as how many people have been infected, quarantined, vaccinated or treated.

"We may have been the only state where something good came out of an attempt to make secret so much of the government's business," Ebel said.

Rep. Neal Kurk, a leading privacy advocate in the Legislature, says New Hampshire has proven much more sensitive to individual rights than the federal government, but he worries the Legislature will succumb to continuing federal pressure _ and dollars.

Kurk is sponsoring a bill this year that would prohibit New Hampshire from participating in a program that he considers a national identification card system. The Real ID Act of 2005 requires states to standardize their driver's licenses, and New Hampshire could get \$3 million to update its computer systems if it participates in a pilot project, Kurk said.

"Where the federal government dangles money, it makes it harder to have a principled decision," said Kurk, R-Weare.

Since 2002, most New Hampshire laws concerning individual privacy and public access have been motivated by advances in technology or fears about identity theft, not homeland security. Others have grown out of ethics scandals.

One new law requires state legislators to report all cash gifts over \$50. It was passed shortly after then-House Speaker Gene Chandler resigned his leadership post over his failure to report almost \$64,000 in contributions from supporters.

Another law established a code of ethics for the executive branch that requires department heads and other political appointees to disclose their finances.

Meanwhile, both the Legislature and the courts are updating public access laws and rules for the electronic age.

A bill to update the Right to Know Law would define when e-mails, video-conferencing and other electronic communications constitute public meetings or records.

And last month, a study committee recommended that as the state's courts upgrade their computers, they make more information available online. Other information _ such as the names and addresses of crime victims _ would still be available only at courthouses.

Hearings are expected before the Supreme Court adopts final rules.

A 2004 law automatically sealing financial affidavits filed in divorce and child support grew out of concerns about identity theft. The affidavits include individuals' Social Security numbers and may contain financial account numbers and the names and birthdates of children. They had previously been public unless a lawyer or party to a case asked that they be sealed.

On the Net:

Pending update to Right to Know Law:

<http://www.gencourt.state.nh.us/legislation/2006/HB0626.html>

Proposal on electronic access to court records:

<http://www.courts.state.nh.us/press/publicaccess.pdf>

New York

The Saratogian

http://www.saratogian.com/site/news.cfm?newsid=16293809&BRD=1169&PAG=461&dept_id=17708&rfi=6

CHRISTOPHER DIAKOPOULOS
The Saratogian

SARATOGA SPRINGS -- There's no need to wonder what is going on in a specific department of city government -- The Freedom of Information Law in New York guarantees the right to receive 'any information kept,' merely by asking.

According to the law, people can request 'any information kept, held, filed, produced, reproduced by, with or for an agency or the state legislature, in any physical form.' That includes reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.

This sounds ideal for the media, but Freedom of Information is for everyone, as shown by the results of a FOI request last year to former City Attorney Matthew Dorsey, asking who else has submitted FOIL requests to the city in 2005.

The city received 111 FOIL requests, including the one for this story, in 2005. About 10 percent

were from reporters.

So who's watching who?

The Saratogian requested information from the city ranging from building permits to information on then-Deputy Public Safety Commissioner Erin Dreyer.

Police Chief Edward Moore requested information on Erin Dreyer, too.

'I requested any documentation showing payback of personal calls made by Erin Dreyer on her cell phone,' Moore said. Moore's request was promptly handled, he said, but no documentation could be found.

'In essence, they are telling me there was no payback,' Moore said.

David Bronner wanted to know how many miles Public Works Commissioner Thomas McTygue puts on his city-provided truck every day.

Molly Gagne, of the Southwest Neighborhood Association inquired who had received permits to pave over the city right of way to create private parking.

She was able to see who did so without a permit by comparing the records she received with the list she compiled of locations where the city's greenway, between the street and the sidewalk, has been paved over.

Greg Anderson, whose family's business is suing the city in federal court, citing the disenfranchisement of minorities in the city's housing policies, used the Freedom of Information law to learn more regarding the city's effort to determine the need for affordable housing.

Both Accounts Commissioner John Franck and Lawrence Britt, who ran for different city offices last year, also made Freedom of Information requests to the city in 2005.

Franck made several requests regarding assessment information.

The result of his inquiry then has helped determine his policy on property assessments now that he has been elected.

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USA Today

http://www.usatoday.com/news/nation/2006-03-12-sunshine-week_x.htm

Survey finds more information kept from public

By Mark Memmott, USA TODAY

Local, state and federal government agencies are keeping more information secret from the public, making it harder for citizens to keep tabs on what elected officials and bureaucrats are doing, an investigation by the Associated Press shows.

The findings alarm proponents of open government.

"What is happening, especially at the highest levels of government, is basically un-American," says Hodding Carter, State Department spokesman in the Carter administration. "Americans

should be treated as owners of their government and of their government's information, not as supplicants to whom you dole it out when you feel like it."



Knight Foundation
Carter

Carter is honorary chairman of Sunshine Week, an effort by media organizations to spotlight issues relating to open government. It kicked off Sunday with the release of AP's report. (**Related:** [Information on Sunshine Week](#) | [Freedom of Information Act sample](#))

"The president believes in open government, and that the presumption ought to be on providing citizens with as much information as possible about their government," White House spokesman Scott McClellan says. However, he adds, "when it comes to our nation's security, particularly during a time of war, it is important to protect highly classified sources and methods that help save lives. The president is concerned about such information being disclosed in an unauthorized way because it could put people's lives at risk."

On Friday, Bush stressed the importance of the free flow of information in a democracy. At a meeting of the National Newspaper Association, he said, "I may not like what you print, but what you print is necessary to maintain a vibrant public forum where people feel comfortable about expressing themselves."

According to a national poll to be released Monday and commissioned by the American Society of Newspaper Editors, any increase in government secrecy flies in the face of what most Americans want, even in the post-9/11 age.

The poll shows that 59% of those surveyed said there's "too much secrecy" at the federal level. Also, 86% said they are "very interested" or "somewhat interested" in knowing what's going on inside state and local governments.

The poll of 1,007 adults was done Feb. 9-March 3 by the Scripps Survey Research Center at Ohio University. It has a margin of error of +/-4 percentage points. Guido Stempel III, director of the research center, says the demographic breakdown of those polled mirrors the Census Bureau's estimates on race, gender, age and other key demographic categories. (**Related links:** [Scripps Survey](#))

The AP investigation found that:

- States have steadily limited the public's access to government information since the Sept. 11 attacks. It analyzed legislation in all 50 states and found that, since the attacks, 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."
- "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." The act, like similar laws in each state, is designed to ensure that most government information is available to the public. It also spells out how to request the information.

Nine of 15 federal departments reported an increase in backlogs of requests for information during fiscal year 2004 vs. 2003, AP says. (**Related:** [AP review](#))

The AP investigation's findings follow other recent reports about efforts by officials at all levels of government to lock information away. Most notably, *The New York Times* reported last month that "thousands of historical documents" that had long been available to the public at the National

Archives have been "reclassified" as secret over the past seven years. The pace of that effort has "accelerated" since the 9/11 attacks, the *Times* concluded.

Shortly after the 9/11 attacks, then-attorney general John Ashcroft told federal officials that the Justice Department would support their efforts to hold back information if the basis for doing so were to safeguard national security.

Carter says arguing that today's threats justify the government's actions is misguided. "We have neither a congressionally declared war, nor a nation on wartime footing, nor an enemy who has the capacity to destroy us by invasion," he says.

"We have a threat from a group of terrorists who are dangerous, lethal, hostile, terrible." But "at the end of the day," he says, that enemy cannot do the "type of damage" that the old Soviet Union could have done — and throughout the Cold War years, the government grew more open, not less.

National security concerns aren't the only reason the public is being kept in the dark, media reports suggest. Last week, *The Seattle Times* reported on its examination of more than 10,000 cases decided by the King County (Wash.) Superior Court since 1990.. It found 420. civil suits that had been sealed entirely — and that in 97%. of those cases the judges had disregarded rules about when cases should and should not be sealed. (Related: [Seattle Times report](#))

The sealed records, the newspaper reported, "hold secrets of potential dangers in our medicine cabinets and refrigerators; of molesters in our day-care centers, schools and churches" and of other public threats.

Judges were more motivated by "go along, get along, clear the docket" than by the public's right to know, says *Seattle Times* investigations editor James Neff

Contributing: David Jackson

Maryland

The Baltimore Sun

<http://www.baltimoresun.com/news/opinion/ideas/bal-id.secret12mar12,0,5159211.story?coll=bal-ideas-headlines>

When secrets rule

March 12, 2006

By Nick Madigan
Sun reporter

When Walter Lippmann, the politically pragmatic journalist and author, said in 1920 that there can be "no liberty for a community which lacks the means by which to detect lies," he might have been describing the government's penchant for secrecy in present-day America.

More than anything, critics of the Bush administration are decrying its habit - particularly since Sept. 11 - of conducting state affairs under an unyielding cover of executive privilege and a "we know best" philosophy that precludes virtually any outside influence or advice.

The administration's secretive conduct has invited unwelcome comparisons with the Nixon era, notorious for cloak-and-dagger schemes that ultimately led to the president's resignation.

Still, administration leaders assert that the war on terror requires extraordinary measures, even at the expense of civil liberties at home.

"Freedom's cause is the right cause, and every action we take in support of it makes this world better and safer for our children," Vice President Dick Cheney said before a gathering of the American Israel Public Affairs Committee in Washington on Tuesday.

"At home and with coalition partners abroad, we've broken up terror cells, tracked down terrorist operatives, and put heavy pressure on their ability to organize and plan attacks," Cheney said. "The work is difficult and very often perilous, and there is much yet to do. But we've made tremendous progress against an enemy that dwells in the shadows. We've counted on the skill and the dedication of our professionals in law enforcement, intelligence and homeland security - and, of course, on the United States military."

In pursuit of this mission, the administration has conducted extensive domestic wiretapping in secret, without first seeking court approval, as the law requires; sent terrorism suspects to secret prisons overseas, where many apparently have been tortured; launched FBI probes within government agencies to ferret out malcontent leakers of government information; and warned reporters that they could be prosecuted under espionage laws that have not been invoked against the press in decades.

Federal employees have been questioned about whether they revealed the wiretaps to The New York Times, or the existence of secret CIA prisons to The Washington Post.

"This administration does not believe in open government," said Melanie Sloan, executive director of Citizens for Responsibility and Ethics in Washington, a nonpartisan watchdog group.

"Our system is based on open government. That's what democracy means. We are not a totalitarian regime where our leaders refuse to explain themselves, although you could be fooled into thinking so."

Sloan and others are particularly distressed by what they view as the administration's violations of the Freedom of Information Act, which was set up to provide access to documents held by federal agencies.

Under President Bush, the Justice Department declared that it would support any agency's desire to keep records secret, no matter what they contained, a sharp about-face from the Clinton administration's stated practice of erring on the side of disclosure.

"The only way to get an FOI request honored these days is to go to court," Sloan said.

"We can go to court and win, but some regular person is not going to know how to file a complaint in federal court and prepare a brief arguing that the administration is in violation of the law. And no one has endless resources to fight every denial. It's very effective, what they've done. They keep the information hidden."

The administration's insistence on secrecy has leached deep into the affairs of other branches of government. The Coalition of Journalists for Open Government reported Monday that the records of almost 5,000 federal court cases across the country are being kept secret.

Studies by the Associated Press and the Reporters Committee for Freedom of the Press revealed the existence of the cases, which are not recorded in official dockets when filed, and in many cases continue through trial and sentencing without being officially recorded. At least two federal appellate courts have ruled that the practice is unconstitutional, the coalition reported.

Occasionally, though not often, courts have ruled in favor of openness. After four years of secrecy, a federal judge ruled in favor of the AP in a lawsuit that sought release of thousands of pages of court transcripts that contained the names of many of the 469 prisoners at Guantanamo Bay who had been captured in Afghanistan. The Bush administration had refused to reveal the identities of the men, saying it would violate their privacy and might endanger their relatives.

The National Archives discovered recently that the CIA and other intelligence agencies had secretly removed more than 55,000 pages of previously declassified historical records from its shelves and reclassified them. Archivist Allen Weinstein asked that all of the removed materials be returned and called for a "moratorium" on reclassification of such documents.

"It's akin to the Soviet Politburo erasing people from photographs," said Lisa Graves, the American Civil Liberties Union's senior counsel for legislative strategy. "The only reason we know most of these things are happening is that civil servants have observed these violations of the law and have bravely blown the whistle and told the press."

David Gergen, a professor of public service at Harvard's John F. Kennedy School of Government who served as a White House adviser to presidents Nixon, Ford, Reagan and Clinton, said recently on CNN's Reliable Sources that the Bush administration "has engaged in secrecy at a level we have not seen in over 30 years."

"Unfortunately," Gergen said, "I have to bring up the name of Richard Nixon, because we haven't seen it since the days of Nixon."

Gergen was referring to Nixon's paranoia, passion for secrecy and criminal conduct, including the use of federal agencies to snoop on dissenters.

"Oh, for the days of Richard Nixon," quipped Marjorie Heins, a lawyer and founder of

the Free Expression Policy Project at New York University's Brennan Center for Justice.

"It's perfectly predictable that those in power, of whatever persuasion, will try to keep things secret, but it does appear that this administration has taken both the drive to assert unlimited executive power and the impulse to keep its activities secret to new levels. If the public and the press can't get information, then we have no accountability."

No one argues that the Bush people have sunk to the street-crime tactics of Nixon's mob. This administration is more subtle but no less effective against its ideological opponents, some critics believe.

The administration's efforts are being waged not only in the media and in the corridors of power but in towns across the country, where Secret Service agents have worked with local police to remove from sight, and sometimes arrest, protesters during appearances by Bush or Cheney. In response to such incidents, the ACLU accused administration officials of discriminating against people simply for disagreeing with White House policies.

"It's really an assault on our fundamental principles of a free and open democratic society," said the ACLU's Graves. "When you combine this culture of secrecy with the fact that the administration is captivated by an extreme vision of unlimited presidential power, the combination risks our core principles as a free people."

Some Republicans are beginning to object, although generally not enough to prevent the White House from getting its way.

Last week, the Senate Select Committee on Intelligence voted to reject a Democratic proposal to investigate the domestic surveillance program. Instead, it voted to establish a seven-member panel, subject to White House approval, that would look into the program.

"We have an administration that's waging war on information," Craig Crawford, author of *Attack the Messenger: How Politicians Turn You Against the Media*, said on CNN.

The Bush White House disagrees.

"We need to protect the right to free speech and the First Amendment, and the president is doing that," White House spokesman Trent Duffy told *The Washington Post* last week. "But, at the same time, we do need to protect classified information which helps fight the war on terror."

What galls some critics is that the administration pursues some leakers in its ranks while selectively doling out secrets it wants made public. Such was the case of Valerie Plame, whose identity as a CIA officer was leaked to the media by the White House after her husband criticized Bush's Iraq policies. In court papers tied to his criminal indictment in the case, Cheney's former chief of staff, I. Lewis Libby, said that his "superiors" authorized him to disclose the classified information.

Joseph J. Ellis, a professor of American history at Mount Holyoke College in Massachusetts, said the administration's "manipulation and fabrication" of a reason for going to war with Iraq "justified a national-security state" and a "reduction in civil rights" in this country.

"We're going to regret this," Ellis said. "The ultimate rationale for all these actions rests on the assumption that 9/11 was an unprecedented threat to the national security of the United States. In hindsight, this will all be seen as an over-reaction."

Ellis argued in a Jan. 28 Op-Ed piece in The New York Times that the attacks of Sept. 11, 2001, were not a threat to national security on the order of previous events, such as the War of Independence, the War of 1812, the Civil War and World War II. Ellis wrote that despite the loss of life on Sept. 11, it did not "threaten the survival of the American republic, even though the terrorists would like us to think so."

"The American people, in general, still remain under the shadow of 9/11," Ellis said in an interview last week. "They're still semi-traumatized, and the Bush administration has exploited that."

Virginia

Newport Daily News

<http://www.newportdailynews.com/articles/2006/03/13/news/news2.txt>

SUNSHINE WEEK: Groups seek 'balancing test' for making records public

By Joe Baker/Daily News staff

Mayor Smith sends out a memo to the tax assessor instructing him to inflate the revaluation numbers for property in the neighborhood of his political rival. When the figures go out, homeowners there are irate and demand an explanation. The mayor and assessor play dumb.

Should taxpayers be allowed to see that memo if its existence is leaked?

Not according to the state's public records law, which exempts memorandums from disclosure unless "submitted at a public meeting."

John Doe accuses Officer Jones of police brutality after his arrest on a disorderly conduct charge. The officer's version has Doe resisting arrest, and that charge is tacked on. The police department is aware that Jones has been accused of brutality a half dozen times in the past two years, but has successfully squelched the reports each time.

Should the public have access to the reports filed accusing Jones of brutality to see if there was a cover-up?

Not according to the state's public records law, which exempts all law enforcement records except those "reflecting the initial arrest of an adult and the charge or charges brought against an adult."

School nurse Betty is accused of molesting a young child. It turns out the school was aware of similar allegations against her when she worked in a state out west.

Should parents be allowed to view the records in the possession of school officials to determine if there was negligence?

Not according to the state's public records law, which exempts all personnel records of employees except their "name, gross salary, salary range, total cost of paid fringe benefits, gross description, dates of employment and positions held ... work location, business telephone number, the city or town or residence and date of termination."

For the last three years, ACCESS/RI, an alliance of open government groups, has been trying to amend the state's Access to Public Records Act so that courts could apply a "balancing test" to weigh whether release of typically private records would be in the public interest.

"We are not wiping out the exemptions," said Sen. J. Michael Lenihan, D-East Greenwich, who is sponsoring the legislation.

"(The balancing test) is not an automatic exemption," said Steve Brown, executive director of the state chapter of the American Civil Liberties Union. "It weighs the public right to know against privacy rights."

The language is taken verbatim from the federal Freedom of Information Act, which, like state law, exempts personnel and medical records from public disclosure if they "constitute a clearly unwarranted invasion of personal privacy." By adopting the same language, Rhode Island would be able to rely on a substantial body of court rulings on what constitutes such an invasion, Phil West, executive director of Common Cause of Rhode Island, told members of the Senate Judiciary Committee last week.

Some public officials hide behind the public records law to prevent potentially damaging or even incriminating records from seeing the light of day, West said. Public-employee pension records were totally exempt from disclosure until a scandal erupted in the early 1990s fueled by leaks of pension records to a reporter. State law was changed after that to make pension records open to public review.

"This just makes it possible ... to find out information when it is in the public interest," West said.

A separate Lenihan bill would make other changes to the public records law. Foremost among them would be a reduction in the amount of time public agencies have to respond to a public records request and an increase in the maximum fine against those found to have violated the law.

Public bodies currently have to respond to a request within 10 days. They can extend that to 30 days with "good cause." But officials who want to deny access to records automatically use the 30-day provision to slow down the process, Lenihan said. His proposal would reduce the 10-30 timeline to three days and 10 days.

In addition, the current \$1,000 fine is nothing more than a mild irritant to those seeking to abuse the law, Lenihan said. Sheila Mallowney, managing editor of The Newport Daily News, testified that the fines provide no incentive for public officials to obey the law.

"Our public records law needs teeth," Mallowney, who also is president of the Rhode Island Press Association, told senators.

The bills got some rough treatment during last week's Senate hearing. Opponents raised the specter of a whole host of records now considered private, including student performance and medical benefits records, being thrown open for public review.

"The only reason any of this would be available is they work for the public, and that's it," Sen. Charles J. Levesque, D-Portsmouth, said. "That bothers me. I have a real interest with how much a person has to sacrifice when they work for a government body."

Bob Cooper, executive secretary for the Governor's Commission on Disabilities, said the balancing test could open students' report cards or the records of those receiving disability benefits from the state to public review.

Rhode Island State Police Lt. LeRoy V. Rose Jr. and Peter Dennehy, an attorney the Department of Administration, said reducing the response time to three and 10 days would be unreasonable. Dennehy said

the response time should be increased, not decreased.

What is it?

Sunshine Week started as Sunshine Sunday in Florida in 2002. Other states launched similar initiatives, and last year, it expanded to a national, weeklong effort dedicated to promoting the importance of open government. This year, Gov. Donald L. Carcieri officially proclaimed March 12-18 as Sunshine Week in Rhode Island.

The Newport Daily News is one of many newspapers, magazines, universities, press associations and major journalism organizations supporting Sunshine Week. In addition to stories and op-ed pieces about freedom of information, The Daily News will run a series of informational ads this week about Rhode Island's public records and open meetings laws. A graphic on Page A12 highlights how the laws work.

For more information, log on to www.sunshineweek.org.

Louisiana

Shreveport Times

<http://www.shreveporttimes.com/apps/pbcs.dll/article?AID=/20060311/NEWS01/60311001>

Louisiana's Sunshine Laws show some dark spots



By John Hill
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Editor's note: Newspapers, broadcasters and others are celebrating Sunshine Week, emphasizing the importance of open government to the public. The Times and shreveporttimes.com will feature stories this week that drive dialogue about why open

government is important to everyone, not just to journalists.

BATON ROUGE — When Louisiana residents want to see the records showing what their government is doing, the state laws are a pretty good ally.

Louisiana ranks at the top nationally for defining what records the public can see, according to the University of Florida's Brechner Center for Freedom of Information.

But there are some pretty dark skies in some areas, such as exempting all public documents in the governor's office from disclosure laws.

The center's Citizen Access Project grades states on the availability of records and access to meetings in a seven-step scale, from bright and sunny to completely dark sky. When it comes to defining public records, Louisiana is mostly sunny with some clouds ranking — fifth on the seven-point scale.

"We are not engrossed in total sunshine, but we're in good shape," said Jim Brandt, president of the Public Affairs Research Council of Louisiana, the nonprofit, nonpartisan governmental think tank.

"We have a pretty good set of Sunshine Laws," he said. "The problem is fighting off exceptions. Every time the Legislature meets, there are exemptions considered. Accumulation of exemptions is our great potential problem."

One weakness in Louisiana is the lack of a mediator within state government, a sort of ombudsman who would work for residents in helping secure public records.

"This is a long-standing (Public Affairs Research Council) recommendation," said attorney Charlotte Bergeron, who tracks public records and open meetings laws for the council and consults with residents seeking records.

Florida, the Sunshine State that gave its nickname to aggressive public records laws that let the sun shine in on governmental agencies, has such a mediator in the attorney general's office, she said.

"Our attorney general's office has objected to the role because they are assigned to represent various public bodies, and they see it as a conflict," Bergeron said.

So, the only remedy available to a resident when denied access to public records is either to file a lawsuit or make an official complaint to the local district attorney's office or the state attorney general's office.

"They have to file suit or explain why they will not," Bergeron said. "In most cases, a citizen is left on his own to bear the burden of the cost of a lawsuit, and that, unfortunately, is beyond the reach of most citizens."

Balance needed

Since President Bush took office in 2001, there has been an erosion of freedom of information laws nationally, said Sandra Chance, director of Florida's Brechner Center for Freedom of Information.

"The Bush administration came in with the agenda of recovering some of the executive privileges and exemptions to the access to public information from the more recent changes in public information laws," Chance said.

The president issued executive orders taking more information out of public view, such as who attended meetings at the White House. That's how the White House has kept secret the names of energy company executives who met with Vice President Dick Cheney as part of his energy task force.

"Access to public information is a check on the government's power," Chance said. "An informed citizenry is one of the cornerstones of our democracy. Without information about what our government is doing, we can't make assessments about the decisions our government is making."

The Sept. 11, 2001, terrorist attacks initiated a move toward even more secrecy.

"After Sept. 11, the administration began drastic changes in the access to public information," Chance said.

While there is a need for security, "there clearly needs to be a balance between appropriate protections for national security and the ability of the public to have access to information about its government," she said.

Trickle down darkness

The homeland security law changes trickled down to the Louisiana Legislature, which in 2002 made more records inaccessible to the public, such as plans for bridges, security plans filed by petrochemical companies, utilities and ports and emergency evacuation plans.

"We have to be careful in shutting down public records," said Linda Lightfoot, executive editor of The Advocate in Baton Rouge and head of the Louisiana Press Associations' Editors Committee that deals with freedom of information issues.

"One issue is convincing the public that there are entities out there, other than the media, that really need access to documents, such as people doing substantive research on government," Lightfoot said.

Another problem arising in Louisiana law is the increasing use of e-mail in developing public policy, she said. For example, members of state boards who sit in meetings and e-mail each other on their wireless communications systems, keeping the reasoning behind

the development of public policy hidden.

“When we were dealing with the paper world and you were allowed to see the file, you could view the ideas that went into policy development. E-mail is very easy to be lost, and it is a lot more difficult to follow,” Lightfoot said.

Bergeron said it is interesting to note that the state has notified state employees that their e-mails should be considered public records, and while they can delete such things as jokes or making arrangements to meet for lunch, most of it has to be preserved.

“Our laws are very broad about what is a public record. They can be in any format,” Bergeron said.

Dark courts

The electronic age has one benefit: the Louisiana Legislature’s Web site, which ranks very high nationally in available information. The House of Representatives even archives all committee hearings, although the Senate does not. Nevertheless, a resident can access all copies of bills, amendments, see changes as they are happening and even watch live meetings over the Internet. The governor’s Web site also video streams her news conferences.

“Access to documents in our Legislature is really phenomenal,” Lightfoot said. “Louisiana is very, very advanced when compared to other state legislatures.”

That sunshine in legislative halls doesn’t extend to Louisiana courts, notes Loyola University communications professor Sherry Alexander, a specialist in access to the courts.

“We are the low man on the totem pole,” Alexander said. “We have one of the least accessible court systems of any state.

“We don’t have cameras in the trial courts, and our judges routinely issue gag orders,” she said. “The state’s judges are just not public-friendly.”

©The Times
March 11, 2006

To learn more

For more information about Louisiana’s laws governing open meetings and public records, or to check how Louisiana ranks nationally, here are some helpful Web sites:

The Louisiana Attorney General’s Office offers helpful information, including references to the attorney general’s opinion at one of these sites: for public records, www.ag.state.la.us/publicrecords.aspx; for open meetings, www.ag.state.la.us/openmeetings.aspx.

The Secretary of State's Louisiana Records Management Division provides information on record retention and guidance on managing electronic records:

www.sec.state.la.us/archives/records/recmgt-index.htm#contract

The Public Affairs Research Council of Louisiana includes a long primer on citizens' rights, including a suggested letter officially requesting public records, at their site:

www.la-par.org, click on "PAR publications and products" and scroll to "Citizen's Rights." For help, call the council at (504) 926-8414.

The University of Florida's College of Journalism and Communications runs the Marion Brechner Center for Freedom of Information's Citizen Access Project that rates all state laws concerning freedom of information. Visit www.citizenaccess.org to learn more.

The coalition of Journalists for Open Government and the American Society of Newspaper Editors offers resources, including a report, "Secrecy on the March," detailing the erosion of freedom of information laws. Learn more at www.sunshineweek.org.

- [Sample Federal FOI ACT Request Letter](#)
- [Citizens' rights under the Open Meetings Law \(R.S. 42:4.1-13\)](#)
- [Citizens' rights under the Public Records Law \(R.S. 44:1-41\)](#)
- [Sample letter to request public records \(from Public Affairs Research Council of Louisiana\)](#)

Florida

The Florida Times Union, Jacksonville

<http://cgi.jacksonville.com/cgi-bin/printit.cgi?story=ZZNOSTORYZZ>

By MIKE GIMIGNANI

The Times-Union

TALLAHASSEE -- This year the frowns win, 41-2.

Every year, the First Amendment Foundation, which Barbara Petersen leads, publishes a list of bills relating to Florida's open-meetings and open-records laws under debate in the Legislature.

Like a kindergarten teacher would do with her students' finger-paintings, she puts a happy face next to a proposal that would expand Floridians' rights to watch over leadership and a sad face on the bills that would chip away at those rights.

In 11 years, Petersen has seen a lot more frowns than smiles.

"We take a lot of bad bills, and we try to fix them, but we never support an exemption. Ever," she said.

A little more than 120 exemptions have been proposed, covering everything from arrest and drug records to the location of state-owned archaeological digs.

And the number goes up every day. Petersen and her staff update their list constantly, but "I keep thinking, 'This is the year they only attack us with 50 bills,'" she said. "We should be so lucky."

Old is new again

Some of the biggest fish in the exemption pool are nothing new. State law requires the Legislature review and re-adopt any exemption to an open-government law within five years of its passing.

A bill exempting autopsy photographs, nicknamed the "Dale Earnhardt law" because it was passed amid the controversy of the NASCAR star's fatal crash at Daytona in 2001, is up for its five-year review. Several bills have been proposed to make the exemption permanent.

The sponsor of the original law, Sen. Jim King, said he didn't want anyone to have the opportunity to publish graphic photos or "sell them on eBay." A judge can allow the photos to be reviewed openly under certain circumstances, but never copied.

"Just because you're ... looking to get the photos shouldn't mean we need to give them to you," the Jacksonville Republican said. "You're going to have to prove the need to see them."

Tom Julin, a Miami lawyer who unsuccessfully argued the case to reverse the Earnhardt bill, said the policy is far too broad and restricts the right of the people to keep courts accountable.

"When you start to close down public access because of privacy concerns, there's a very high price that the public and the press pays," he said.

King and Sen. Rod Smith, D-Alachua, have proposed a new step this year: Senate Bill 1898 would make any police photo or video of victims at a crime scene exempt from inspection.

Critics have said the bill was proposed in response to a boot-camp scandal unfolding in the Department of Juvenile Justice. Smith said his priority is to prevent people from printing the photos for thrills or profit.

"When you have an obligation in a state that has a constitutional right to privacy and the public also has a right to broad access, you have to side on the right to privacy," he said.

Ups and downs

Smith, who's also running for governor, has introduced both bills the First Amendment Foundation supports. One of those would require any voting equipment used in elections to produce a paper record that could be used in a recount.

"There is a confidence level required in our democracy," he said. "People said when we switched to the electronic equipment that we don't need the records, but we absolutely need it more."

Under state law, any open-government exemption must include a statement of public necessity and must pass by a two-thirds vote in both the House and Senate.

"Before, exemptions would be buried in 400-page bills with little to no discussion to why they were needed," said Pat Gleason, general counsel for Attorney General Charlie Crist. "The more recent ones usually are much more compelling."

Gleason, a veteran of five attorneys general who called all five "champions of public access," said voters can usually tell who will fight for the public's right to access and mark their ballots accordingly.

"We are the Sunshine State, and we have to govern ourselves that way," she said. "For the most part, the people up here know that."

Not so open laws

Here are some of the bills under debate in the Legislature that would curtail the right to access information:

SB 592 by Sen. Bill Posey, R-Rockledge: Would continue the exemption, in effect since 2001, on access to autopsy photographs or videos.

HB 687 by Rep. Sandy Adams, R-Oviedo: Would restrict public access to personal information of applicants for state concealed-weapons permits.

HB 787 by Rep. Jennifer Carroll, R-Green Cove Springs/SB 1712 by Sen. Stephen Wise, R-Jacksonville: Would restrict public access to home parcel ID numbers maintained by county property appraisers for certain state employees.

SB 1448 by Sen. Gwen Margolis, D-Bay Harbor Island: Would restrict public access to e-mail addresses of individuals held by a state agency.

SB 1898 by Sen. Jim King, R-Jacksonville and Sen. Rod Smith, D-Alachua: Would restrict public access to photos or videos of the remains of a crime victim as part of a criminal investigation.

SB 446 by Sen. Skip Campbell, D-Tamarac: Would make it a felony to disclose or sell personal information about an individual without first getting that person's consent.

For more information on these bills, go to Jacksonville.com, keyword: legislature. People seeking public records can go to or call the department that keeps the records. In Jacksonville they also can call (904) 630-CITY to make the request.

Fort Lauderdale Sun Sentinel

<http://www.sun-sentinel.com/news/local/southflorida/sfl-312papers.0,4735089.story?coll=sfla-home-headlines>

Florida newspapers push for more open government

By Andrea Fanta
Associated Press Writer

TALLAHASSEE, Fla. -- Newspapers across the state sent a unified message to their readers on Sunday: Keep the doors to Florida's government open.

Known as Sunshine Sunday, the day when Florida's reporters remind residents that transparent government isn't just about lobbyists and politicians. It's about the taxpayers who pay for government business.

To send this message, around 50 newspapers statewide printed editorials, cartoons and columns promoting the issue. They were also frank about some of the state's problems, which came to light during a statewide test by the First Amendment Foundation.

The nonprofit group, which promotes free press and speech, enlisted auditors in every county to make public records requests. They found that 42 percent of the 220 government agencies audited violated the law in some way, several state newspapers reported.

For example, "questionable public records practices related to e-mail correspondence locally included: charging \$10 for a blank computer disk to burn records onto in Deltona; quoting a rate of \$100 an hour for retrieving e-mail records in Palm Coast; and charging a \$13.78 hourly fee for simply viewing subject lines of city e-mails in Daytona Beach," The Daytona Beach News-Journal reported.

In Manatee County, an employee from The Herald in Bradenton audited the sheriff's office, the school district, the county administrator's office and the mayor's office.

"No one at the sheriff's office could tell the auditor where to find the call log or how to obtain it. In the municipalities, the auditor was referred to several people before being directed to a county or city attorney, who helped speed up filling of the requests," the newspaper reported.

But not all the audit results were grim. In Jacksonville, three of four tests performed by The Florida Times-Union were successful.

Florida taxpayers depend on open access laws. For example, parents want to know why their school board is firing a favorite teacher, residents want to object to their city council's wastewater management plan, and home buyers want to be able to search title records for their new properties, said Barbara Petersen, president of the First Amendment Foundation.

``You can't have a democracy without open government," said Barbara Petersen, president of the First Amendment Foundation. ``People use open records every day, even if they don't realize it."

Petersen and other advocates continue to monitor efforts to curb open government standards. This year, Petersen has marked at least 34 bills for opposition from the foundation.

This is the fifth year the Florida Society of Newspapers Editors has sponsored Sunshine Sunday. Last year, the American Society of Newspaper Editors adopted the theme and turned it into a weeklong event when reporters across the country urge readers to demand that the doors to government stay open.

``Sunshine Week aims to empower the American people by demanding that government open its doors and allow a free flow of news and information," said Washington-Hodding Carter, honorary chairman for Sunshine Week 2006.

``With the totalitarian model of all-powerful Big Brother in retreat around the world, this is no time to tolerate it here at home," Carter said. ____ On the Net:
<http://www.fsne.org>.

Minnesota

Duluth News Tribune

<http://www.duluthsuperior.com/mld/duluthsuperior/14076262.htm>

Open government issues in Wisconsin

Duluth News Tribune - Associated Press

The top 10 open government problem areas in the state, as identified by the Wisconsin Freedom of Information Council:

High costs. Despite efforts by the state Attorney General's Office, people still are sometimes asked to pay hundreds and even thousands of dollars. The council said that - except for circuit court records that by law must cost \$1.25 per page - records custodians should charge 10 to 25 cents per page or waive the fee, as the law allows.

Delay. Officials often put off records requests, although the open records law states the material should be provided "as soon as practicable and without delay." The council said that most requests should be satisfied within 48 hours.

Closed meetings. State law says government meetings must be open to all with a few narrow exceptions. But the council said some officials close sessions because they believe they will be able to speak more candidly. It said these meetings should almost always be open.

Incomplete agendas. A public body must list on an agenda the business it intends to take up so that citizens can attend. The council said vague subjects like "Mayor's Report" or "New Business" should be avoided.

Public-private obfuscation. Publicly anointed and funded agencies more and more consider themselves exempt from the state's open records and open meetings laws. But the council said such quasi-governmental corporations fit the definition of a governmental body and should heed both laws.

Medical exemptions. Individuals' medical records and personal health histories should be private, but federal medical privacy rules are being used to block access to information about legitimate public-health matters. The council said medical privacy rules should not preclude release of information about matters of public health, so long as individuals are not identified.

Privacy protections. Personal privacy is too often used to justify withholding records of legitimate public interest. The council asks that, if a record is too private for the public to see, why are government officials collecting it?

Prosecutor's privilege. State prosecutors' files are exempt from the open records law. The council said some law enforcement officials treat their reports as secret, too, because they become part of prosecution files. It said prosecutors should restrict access only to records that would compromise their ability to prosecute a case or the defendant's right to a fair outcome. It said files of closed cases should be public records if the public's right to know outweighs the reason for keeping the information secret.

E-mail confusion. Court rulings have affirmed that e-mail and other electronic records must be released on request. But the council said there is little clarity in law or practice as to how long these records must be kept, what systems ought to be in place for storing and retrieving them, and whether and when e-mail exchanges may violate the open meetings law. It said e-mails and other electronic records should be maintained as long as possible.

Lack of awareness. A lack of public awareness may be the biggest threat. The council said the open records and open meetings laws exist for the benefit of all citizens, not just the media.

California

Sacramento Bee

<http://www.sacbee.com/content/politics/story/14229349p-15052502c.html>

Bush's secrecy push is excessive, critics say

By David Westphal -- Bee Washington Bureau Chief

WASHINGTON - Working at the National Archives in the late 1990s, historian William Burr stumbled onto a 1962 telegram written by fabled diplomat George Kennan about China's nuclear program. The telegram, essentially a translation of a Yugoslav newspaper article, was mostly innocuous, but Burr decided to make a copy of it.

It proved to be prescient. Today the original document has been removed from the archive, replaced by a notice that declares it to be a government secret.

The document is one of 9,500 that have been removed from the archives in a project that has become the new poster child for open-government advocates, many of whom contend the Bush administration is taking secrecy to new heights. What makes the latest venture especially eye-catching is that many of the reclassified documents already have been published in government books or still appear on federal Web sites.

"It just seems like a complete overreaction," said Burr, a senior analyst for the National Security Archive. Burr said it was understandable that the government would clamp down a bit after the 2001 terrorist attacks, but he added, "Some of this makes little sense because the documents are already in the public domain. It's too late."

Open-government advocates say the massive reclassification project carried out by the CIA and other agencies is more evidence for their assertion that this is one of the most secretive administrations in modern history.

"Open government is under dramatic assault," said Paul McMasters, a First Amendment expert at the Freedom Forum. The Bush administration, he said, seems to view the federal government as being involved in "profligate information sharing" that needs to be curbed.

Bush has said he favors open government and, in a meeting with newspaper editors a year ago, put his views in the context of urging democratic freedoms around the world. "I talk to the people in Iraq about a free press and transparency and openness," he said, "and I'm mindful we can't talk one way and do another."

But he also added: "We're still at war. And that's important for people to realize."

Throughout American history, anti-secrecy crusaders nearly always have been at odds with presidents over government openness. But many of these advocates say the Bush presidency has been particularly active in limiting the public's access to government information.

"What has happened is that there has been a pendulum swing far in the direction of increased secrecy," said Steven Aftergood, a senior research analyst at the Federation of American Scientists. "It's not just a matter of a few frustrated reporters. It's also Congress, which has had extraordinary difficulty getting the information it needs to do oversight."

Others say that in an age of terror threats, the greater worry is that critical security information will leak into the public domain, at risk to American lives.

"I think times have changed," Sen. Pat Roberts, R-Kan., chairman of the Senate Intelligence Committee, told Fox News after expressing support for legislation that would broaden the scope of criminal charges for leaking classified information.

For some anti-secrecy advocates, the recently discovered program to classify thousands of once-open documents takes the cake. Earlier this year another historian, Matthew Aid, reported that the CIA and other federal agencies had secretly reclassified more than 55,000 pages of records, including many that have appeared in widely disseminated publications.

According to Aid, some of the now-sealed documents seemed noteworthy only because they proved embarrassing to the United States. One was a complaint from the CIA about the bad publicity it was receiving over its inability to forecast anti-American riots in Colombia in 1948. Another documented the CIA's failure to predict China's intervention in the Korean War.

Aid notes Bush's own executive order declares that information cannot be classified simply to "prevent embarrassment to a person, organization or agency."

It is not unusual for federal agencies such as the CIA to conduct reviews of public documents at the National Archives to determine if they should be reclassified. But the volume and nature of this particular project drew a rebuke from the National Archives and Records Administration, which earlier this month declared a moratorium on further reclassifications.

Allen Weinstein, the nation's chief archivist, asked the agencies involved in the reclassification to "restore to the public shelves as quickly as possible the maximum amount of information consistent with the obligation to protect truly sensitive national security information."

A CIA spokeswoman said the agency's reclassification effort should be seen as part of a huge amount of information - 26 million pages - that the CIA has released to the archives since 1998.

"The CIA has worked hand in glove with the National Archives over the years on reclassification," said CIA spokeswoman Michele Ness, who added that the agency welcomed Weinstein's call for discussions on how the reclassification project should proceed.

Aftergood, who writes a secrecy newsletter for the Federation of American Scientists, said some of the administration's confidentiality initiatives are a legitimate result of the Sept. 11 terror attacks. But he said the White House's anti-openness bent goes

well beyond that, and started when Bush and Vice President Dick Cheney came to office.

"The administration philosophically believes in a strong executive," he said, "and part of that is the belief that strength comes from secrecy."

Last year, Cheney acknowledged in a meeting with reporters that the White House has sought to strengthen the executive powers of the president.

"I think that the world we live in demands it," he said.

For some journalists, the administration showed its intentions early, when then Attorney General John Ashcroft issued revised guidelines for releasing documents under the Freedom of Information Act. The new rules seemed to send a message to federal agencies by declaring that the Justice Department would support any denial of a FOIA request if there was a "sound legal basis" to do so.

In a meeting with news media executives, Justice Department officials initially indicated the revisions would have little practical effect. But a Coalition of Journalists for Open Government study found that agency use of exemptions to limit disclosure grew by 22 percent from 2000 to 2004.

Also striking has been the increase in the number of documents ordered classified.

Between 1999 and 2004, the number of documents ordered sealed annually nearly doubled, to 15.6 million, according to the Information Security Oversight Office. Meanwhile, declassifying documents has slowed dramatically - from 127 million pages in 1999, to 28 million pages in 2004.

Perhaps more disconcerting to journalists is the administration's apparent eagerness to confront reporters who acquire and publish classified national security information. Two investigations are under way, involving reporters from the Washington Post and the New York Times, aimed at uncovering who leaked information about terrorist prison sites abroad and the National Security Agency's domestic eavesdropping program.

Although ostensibly aimed at the leakers, CIA chief Porter Goss recently told Congress he hopes reporters are implicated as well.

"It is my aim and it is my hope that we will witness a grand jury investigation with reporters present being asked to reveal who is leaking this information," said Goss.

A grand jury subpoena could put the reporters at risk of jail because they likely would refuse to testify, having promised their sources not to reveal identities.

A similar clash sent former New York Times reporter Judith Miller to jail for 85 days last year for refusing to testify before a grand jury investigating the leaking of a CIA employee's identity. Miller ultimately received a waiver from her source and appeared before the grand jury.

In recent weeks the administration has signaled a willingness to play even rougher with the news media, suggesting that reporters probably could be charged with a felony simply by coming into contact with classified information, even if they did nothing with it.

The White House does not buy the argument that it is depriving the public of crucial information, insisting that some uptick in secrecy is necessary because of the war on terror.