

The Midwest

North Dakota

Grand Forks Herald

http://www.grandforks.com/mld/grandforks/news/local/14078563.htm?source=rss&channel=grandforks_local

NORTH DAKOTA: Privacy worries motivate requests to close records

Lawmakers approve 31 bills that restrict access to public records or meetings, 13 measures that provide greater access

By Dale Wetzel

Associated Press

BISMARCK - Worries about privacy and identity theft, rather than fears of terrorism, have motivated many of the North Dakota Legislature's recent proposals to deny access to public records, an Associated Press review shows.

Since the terrorist attacks on New York and Washington, D.C., on Sept. 11, 2001, North Dakota lawmakers have approved 31 bills that restrict access to public records or meetings, and 13 measures that provide greater access, an analysis found.

Two bills were intended to block access to information about security precautions at public buildings, dams, bridges, telephone centers, power plants and other facilities, and to bar disclosure of computer passwords and codes.

However, other measures that restricted public access to government information were influenced by privacy concerns rather than the specter of a terrorist attack, legislators and state officials say.

"A lot of it has to do with how easily information can be accessed and disseminated over the Internet," Attorney General Wayne Stenehjem said. "I think that was a bigger factor than 9-11."

The number of future requests to close records may increase because of public disquiet about "how accessible our information is," Stenehjem said.

"It is something we are going to have to be ever mindful of, because I think that will be the reasoning for efforts to close more records up, even more so than terrorism and national security interests," he said.

Restrictions

In the past four years, lawmakers have approved a broad prohibition against disclosing someone's Social Security number or medical information on public records. Agencies are obliged to release documents with restricted information, as long as the exempt information is blacked out.

Other bills were intended to implement new federal laws that shield the disclosure of individuals' medical and banking data.

One measure declared autopsy photographs and videos to be confidential, a law inspired by a Florida dispute over autopsy photos of race car driver Dale Earnhardt, who was killed five years ago during a crash at the Daytona 500.

North Dakota's sunshine laws assume government records, and meetings of government boards, are open to the public unless part of the meeting, or information in a record, is exempted from the law.

Public agencies have the option of disclosing information that is exempted from the law. Only information that the law deems confidential is barred from public release.

Mark Trechock, director of the Dakota Resource Council, a Dickinson (N.D.)-based landowner and environmental group, said lawmakers should closely examine any requests to close off information held by local or state governments.

"I think the open records law is a great tool for ordinary folks in North Dakota to figure out what is going on," Trechock said. "It's a great tool for people to become engaged in civic affairs, and any attempt to take those rights of access to information away is, to me, really an attack on democracy."

Handful of defeats

North Dakota lawmakers have softened or defeated a handful of measures in the last four years that sought to impose broad new restrictions on public information disclosure or allow public boards to meet without notice.

In the 2005 Legislature, the state Game and Fish Department asked to exempt data on boat and hunting license applications from the open records law. The proposed change, which would have affected more than 200,000 people, was dropped.

The North Dakota Stockmen's Association pushed a bill to close off feedlot permit applications from public view, except for the applicant's name and address. The measure would have barred a prospective feedlot's neighboring landowners from getting information about the operation's size and plans for waste disposal.

The association and lawmakers who supported the bill said it was meant to deter feedlot terrorism. They argued that permit applications contain information that can be used to sabotage a feedlot.

The legislation was changed to allow disclosure of application data, but only if the person requesting it provides contact information, which is then provided to the feedlot's operator.

Don Morrison, director of the North Dakota Progressive Coalition, which has monitored feedlot development, said keeping feedlot information confidential as a terrorism safeguard "was one of the more ludicrous arguments that we have heard."

"They really do want to hide from the public the fact that these feedlots are coming," Morrison said. "They don't want the public to be part of the process of finding out information about what is planned, and what is going on."

Wade Moser, a spokesman for the North Dakota Stockmen's Association, said it is reasonable for feedlot operators to be worried about someone who is trying to spread disease or other mayhem.

"I would hope that they would respect the producer's right to protect the operation before a wreck happens," Moser said. "Prevention is a far better angle, I think, than waiting until something bad happens, and then saying, 'We should have done something.'"

Dennis Fewless, director of the state Health Department's water quality division, said the agency has received two feedlot information requests since the law took effect last July. Both were from businesses that were compiling a mailing list for marketing purposes, Fewless said.

During that time, the Health Department has issued permits for 41 feedlots, Fewless said. The agency has 598 active feedlot permits, of which 70 are licensed to handle more than 1,000 animals.

Iowa

Quad Cities Times

<http://www.qctimes.net/articles/2006/03/10/opinion/opinion/doc441204f263ac0103635160.txt>

Direct links to public records

By Quad-City Times |



More public information is available online.

More and more public records are searchable from your home or office computer. Here are direct links to some important public databases.

Sex offender registries

[Illinois](#)

[Iowa](#)

[Nationwide](#)

Criminal records

[Illinois](#): Illinois has limited access to counties that chose to participate. That includes Rock Island, Mercer, Henry and Whiteside counties participate. After logging on, click on "participating courts page" and choose a county for a search. This is the free area. There are paid areas that give more information for a fee.

[Iowa](#): Click "online records," and, at the bottom of the next page, select "click here to begin search." Then under "trial court," click "case search." There are many parameters available to broaden or focus any search of criminal records. This is the free area. More information is available for a modest subscription fee.

[Nationwide](#): The U.S. government uses Pacer for records in the federal courts. This system requires an account.

Background on doctors

[Illinois](#): The Department of Financial and Professional Regulation allows users to check on the license status of a doctor and many other professions.

[Iowa](#): Information about disciplinary action taken against a physician is available. The site allows users to search for their doctor by name, town and specialty and tells how to get details of any disciplinary action taken against a physician.

Nursing homes

[Illinois](#): Nursing home information.

[Iowa](#): Click on "health care facilities," then "report cards."

[Nationwide](#): Information kept by the federal government's Medicare program.

Child care

[Illinois](#): Call a statewide hotline at (877) 746-0829 for information. Currently, nothing is available on the Web.

[Iowa](#): A list of registered day-care providers. For information about any problems at those registered centers, call the local Department of Human Services office at (563) 326-8794.

Property records

[Scott County](#): Assessment and current tax information on every property in the county, many with photographs.

[Rock Island County](#): Assessment and current tax information on every property in the county.

Wisconsin

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

Open government issues in Wisconsin

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.

The Janesville Gazette

http://www.gazetteextra.com/openrecords_cellphones031606.asp

Open records request yields unpredictable responses

By Jonathan Gneiser
Marshfield News-Herald

Citing public safety and security reasons, some central Wisconsin public employees' cell phone numbers aren't available to the public.

Others released all the cell numbers requested during an investigation by the Marshfield News-Herald.

Security concerns have typically won in statehouse battles since the Sept. 11, 2001, terrorist attacks that pitted advocates of government openness - including journalists and civil liberties groups - against lawmakers and others who worry that public information could be misused, an Associated Press analysis of laws in all 50 states found.

The News-Herald asked area school districts, counties, cities and villages for a list of the cell phones provided for their employees' use, the cell phone numbers, the employees to which they're assigned and the cost of all calls made in 2004 and 2005.

At first, the city of Marshfield didn't provide any cell phone numbers.

"In view of the need to balance the public's interest in safety, security and general welfare against the state's policy of open government, cell phone numbers will not be included," City Attorney John Hutchinson wrote, "because the cell phone users are or may be persons involved in law enforcement, fire protection, emergency response, disaster preparedness and other forms of emergency communications."

"Release of the cell phone numbers may jeopardize their ability to perform emergency duties and, potentially, further endanger public safety," Hutchinson said.

"For example, in the event adverse weather interrupts normal phone utilities, the cell phone may be the primary means of communication among city emergency personnel," he said.

The News-Herald asked Wood County District Attorney Todd Wolf to bring a court action - called a mandamus action - to compel disclosure, but Wolf found the city's reason to claim an exception to the state's Public Records Law for all of its cell phone numbers was plausible.

"It would be my position that (Hutchinson) has represented legitimate reason for not supplying you with the individual cell phone numbers," Wolf wrote.

The city then provided 22 of the 72 numbers requested, but not cell phone numbers for certain employees of the fire and rescue and police departments, street division and wastewater utility, including sewage treatment plant truck drivers and street paving crews.

The fire chief's and police chief's cell numbers were provided by the city or by the employee.

"I don't want to be insensitive to legitimate concerns about security and smooth operation," said Bill Lueders, president of the Wisconsin Freedom of Information Council, a group formed to protect First Amendment rights. "There are legitimate reasons for government officials to withhold some information, but I'm not sure this is one of those situations. I just don't see what the urgent need for secrecy is for these numbers."

When the News-Herald asked Wisconsin Attorney General Peg Lautenschlager to bring the mandamus action that Wolf refused, asserting that the reasons for the refusal are overly broad, her office also declined.

"In our judgment, a court is likely to defer to the city's reasons (for denying access to the remaining cell phone numbers). In other contexts, the courts have accepted safety and security as legitimate reasons for denying access to certain information," Assistant Attorney General Paul Barnett wrote.

"(If the cell phone numbers were made public), the city's expressed concern about jeopardizing the ability of certain law enforcement, emergency responder and similar staff to perform their duties and the potential for further endangering public safety seems quite reasonable," Barnett wrote.

Although claiming safety and security reasons to deny access to street division and wastewater utility cell phone numbers might be overbroad, there are emergencies that "would put the water treatment guy front and center," said Bob Dreps, a lawyer who represents the Wisconsin Newspaper Association.

"Any kind of argument about how the water treatment director might be involved in a crisis where his phone needs to be free for internal use, that will carry the day," Dreps said.

The city's denial included cell phone numbers assigned to sewage treatment plant trucks.

Wood County Sheriff's Department cited several reasons for not releasing any of its cell phone numbers because they're "intended for internal communication and outgoing calls ... for law enforcement, emergency response, disaster preparedness and other forms of emergency communication," wrote Lt. Robert Levendoske. "The release of these cell phone numbers may jeopardize their ability to perform emergency duties and potentially endanger public safety."

The department's cell phone costs could increase through "unrestricted line usage by having public knowledge and usage for incoming calls," Levendoske added.

Clark County Social Services also refused to release the numbers of its 19 cell phones.

"Due to the nature of the work we do with clients, and confidentiality issues, I will not release names matched with numbers," wrote Gary Laehn, social services department director.

But Lueders said he doesn't understand Laehn's refusal.

"It seems to me (social service workers') stationary phones ought to be a matter of public record - why should there be additional secrecy for cell phones?" Lueders asked.

While Clark County Emergency Management provided cell phone numbers for its director and liaison, the number for its incident command vehicle's cell phone was not disclosed.

"It's a secure line used for instant response," said Jennifer Lord-Kouraichi, director of Clark County emergency management. "We need a line open for emergency communications or dispatching purposes."

The department is only charged for the ICV phone when it's used, so Lord-Kouraichi said for fiscal reasons it's prudent to limit its use to emergency management and law enforcement.

"I wouldn't want to bring a case that challenges their assertion that they don't want to give these numbers because they don't want people calling them," Dreps said.

Medford also didn't disclose numbers for the fire department's cell phone and police department phones, because they are used during "critical incidents," wrote Medford City Clerk Virginia Brost.

The Medford School District didn't provide any cell phone numbers, citing its policy "to not release cell phone numbers to any other party," wrote Steve Russ, district administrator.

Abbotsford, Spencer, Stratford, Taylor County and the school districts of Abbotsford, Marshfield, Neillsville, Spencer and Stratford did provide the numbers of all of their cell phones. Neillsville, Auburndale and Auburndale School District don't give cell phones to employees.

The fact that some provided information that others refused to provide doesn't matter, Dreps said.

"They saw the balance differently, and the court is going to apply its own judgment to the balancing test arguments," he said. "Without any prior case law on the subject, it's very hard to predict how a court would rule on this."

Some custodians of public records respond out of fear - imagining all of the negative things that could occur as a result of the release of information, Lueders said.

But Lueders questions whether making cell phone numbers public would cause any problems.

"My thought is in the real world, people who operate openly don't really face those dire consequences," he said. "I think people generally make reasonable use of the information with which they are provided."

The purpose of open records law is to permit oversight, Dreps said.

"How much they spend is certainly part of that oversight," he said. "Having the

number, so that, what - you can call it? That doesn't really inform anyone of government accountability."

The Capital Times Madison

<http://www.madison.com/tct/news/index.php?ntid=76106&ntpid=0>

Open government in peril?

Watchdogs decry secret decision-making

By Anita Weier

Government watchdogs warn that Wisconsin's proud tradition of open government has been endangered in recent years by decisions reached in secret by local and state officials.

Bill Lueders, president of the Wisconsin Freedom of Information Council, says many recent actions by local governments and state officials violate the spirit, and sometimes the letter, of the state's open records and open meetings laws.

"The biggest new problem that is coming to light involves government entities negotiating in secret to do major projects in communities," Lueders said, citing secret negotiations for a Wal-Mart distribution center in Beaver Dam and an ethanol plant in Milton.

"More and more government entities hammer out deals in secret and announce them once every last detail is decided."

The Madison School Board voted in November to buy property for a school site on the west side, despite criticism by some of its own members about the closed-session process before the vote and a lack of public input.

Attorney Christa Westerberg of the Madison-based Garvey & Stoddard firm has been involved in both the Beaver Dam and Milton cases, acting on behalf of citizens' groups.

"We had challenged nine months of closed session meetings to negotiate the ethanol plant without the public even knowing the terms and developer. The notices for closed session just said they were closed pursuant to a state statute, and an industrial park was tacked on. The last notice also mentioned a development agreement," she said.

"In that meeting the City Council approved and then announced the plant, after approving a developer's agreement in closed session that committed the city to paying for infrastructure and a substantial subsidy."

A Rock County judge ruled in December that the meetings did not violate the law because economic development is a legitimate subject for closed session. But that decision has been appealed.

In Beaver Dam, the entity negotiating for a Wal-Mart distribution center was the Beaver Dam Area Development Corp., which describes itself as a private entity although it is largely funded by the city.

After a memorandum of understanding was negotiated, the City Council discussed the matter in closed session and then voted in open session, Westerberg said.

Court challenges: Citizens for Open Government filed a lawsuit challenging the annexation of land for the distribution center, a lawsuit that was ultimately settled.

The state Department of Justice filed a lawsuit asking the court to declare the Beaver Dam Area Development Corp. a quasi-governmental body subject to open meetings and open records laws. A Circuit Court judge ruled that it is a private entity, but the Department of Justice plans to appeal.

"There are a lot of these private development corporations out there supported by a municipality," Westerberg said.

"Local governments are extremely cagey about economic development activities and tend to operate in secret whenever they can. In Milton, the city claimed it could meet in closed session for competitive or bargaining reasons. We are interested in seeing a court of appeals interpretation."

State legislators have sometimes voted by paper ballots instead of in open committee meetings, a procedure that the Garvey firm has challenged in court. A Dane County judge ruled that this was a violation of the open meetings law in a particular legislative committee case.

"The open meetings law says why all of this is important," Westerberg said. "The statement of policy in the legislation says that a democracy depends on an informed electorate, and to that end you've got to have open government."

Violations of the law most often occur at the local government level, at times because officials do not know the law, and at others times "they are testing to see what they can get away with," she said.

"Some of these decisions will have a huge impact on a community," Westerberg added. "There can be environmental results such as contamination of air and water and an impact on municipal finances. Citizens have a right to know."

Lueders noted that some public officials follow the state's tradition of openness carefully and should be applauded for doing so.

"Openness serves not just the public but also the officials. It is in the interest of public officials that what they do be understood by the people they do it for," he pointed out. "And

part of our responsibility as citizens is to hold government accountable. To do that we need access to public information."

State Rep. Louis Molepske, D-Stevens Point, also is a solid defender of the public's right to know. He has authored legislation that would prohibit legislators from refusing to share legislative drafts with the public after disclosing them to special interest lobbyists.

"The overriding public importance is promoting and maintaining open government. All citizens must have equal access to open records," Molepske said.

"If our own citizens cannot participate in our legislative process because they cannot afford their own lobbyists, then something is inherently wrong with our system."

Attorney General Peg Lautenschlager agrees, and has taken two legislators Sen. Dave Zien, R-Eau Claire, and Rep. Scott Gunderson, R-Waterford - to court after they shared a draft of a bill with pro-gun lobbyists that would allow residents to carry concealed weapons, but refused to provide a copy to the state Department of Justice.

Some legislators have argued that limited public access protects the institutional integrity of the Legislature and that an attorney-client relationship exists between legislators and drafting attorneys.

But Molepske says granting lobbyists exclusive access to drafts of bills not only denies the public its right to open government, but also gives special interests a distinct advantage in passing their legislative proposals. Legislative committees have at times held public hearings within 24 hours of a bill's introduction, before the public has the opportunity to read, understand and submit testimony on the effects of a bill.

Sunshine Week: Many newspapers are featuring articles this week aimed at giving readers information about why open government is important to everyone, not only journalists. More information is available on the Wisconsin Freedom of Information Council Web site at www.wisfoic.org.

Michigan

Michigan Times Herald Port Huron

<http://www.thetimesherald.com/apps/pbcs.dll/article?AID=/20060313/NEWS01/603130306/1002>

By ANDREA MASON
Times Herald

Clouds sometimes form over the state's "sunshine laws" intended to offer easy access to public records.

Technically, certain documents are available under the Freedom of Information Act. However, an individual's right to privacy can outweigh the public's right to know, experts said.

Take, for example, Michigan's permits for carrying a concealed weapon.

The permits are on file at each county clerk's office, and the information could be released. However, clerks are not obligated to make public the names of permit-holders.

"Concealed-weapon permits - because they are held by public bodies - are subject to FOIA (the Freedom of Information Act)," said Tom Quasarano, a state assistant attorney general.

However, the information may be withheld on grounds of privacy.

"The right of privacy would outweigh the right to know," Quasarano said.

In 2000, the Michigan Appellate Court struck down a *Detroit Free Press*' attempt to view any and all such permits possibly held by legislators. The court cited legislators' privacy.

The Michigan State Police does make available the number of applications by county and their status. For example, St. Clair County had 1,393 applications from July 1, 2004, through June 30, 2005. Of those, 1,340 were approved. The records give reasons why some applications were denied or revoked.

Those records can be requested directly from the state police or found online through the state government Web site.

People who possess concealed-pistol permits are law-abiding citizens, said Lt. Thomas Carr of the St. Clair County Sheriff Department.

Those not eligible for permits include felons, people suspected in a felony, people with serious mental conditions and people convicted of certain serious misdemeanors.

Requirements include being a state resident for at least six months, being at least 21 years old and successfully completing pistol-safety training.

Concealed weapons are not allowed in certain places in Michigan, such as churches, courtrooms, schools, college dormitories, casinos, hospitals, sports arenas and casinos.

The permit resembles a small card, about the size of a driver's license.

It has a photo, name, date of birth and date of expiration. Permits are issued for five years at a time.

MLive.com Grand Rapids, Kalamazoo, Jackson, Muskegon, Saginaw, Ann Arbor
<http://www.mlive.com/newsflash/michigan/index.ssf?/base/news-32/1142086456117480.xml&storylist=newsmichigan>

Debate over what's public information still goes on

(AP) — EDITOR'S NOTE — The week of March 12 has been declared Sunshine Week by media organizations and other groups pressing for government access, contending information is being withheld more often by officials who cite post-Sept. 11 security concerns. This story examines the use of the Michigan Freedom of Information Act, and the government's willingness to make its records available.

By KATHY BARKS HOFFMAN
Associated Press Writer

LANSING, Mich. (AP) — Michigan's Freedom of Information Act marks its 30th anniversary this year, but the rules over what government records should be made public are anything but settled.

That was clear in recent weeks as lawmakers and judges wrestled with whether school districts should release the names of school employees convicted of crimes, and how soon they should let the public have access to the list.

The information is of obvious importance to parents, and media outlets were swift to ask for the list under the Freedom of Information Act once the state Department of Education in early February sent the list to schools after checking the criminal histories of more than 200,000 school employees.

But a judge blocked the list's release after teachers testified that they were wrongly included and teachers' unions said school districts needed time to root out inaccuracies that could unfairly ruin teachers' reputations. The state withdrew the list, and state police are working on a more accurate assessment of school employees with criminal records.

Lawmakers, meanwhile, are working on a bill that would require releasing to the public only employees who have committed felonies or certain misdemeanors involving sex or violence, not those convicted of other misdemeanors.

The changes don't sit well with FOIA advocates who worry that the public wouldn't know about many employees who had misdemeanors on their records. Some teachers say their minor infractions, often committed long ago, shouldn't bear on their employment. But supporters of open government said that makes it too easy for school officials to avoid accountability.

"Would you vote for a school board member if they decided to keep someone (on staff) even though they'd been convicted of the use of marijuana, and you know it's been plea bargained down from selling?" asked Dawn Phillips Hertz, an Ann Arbor attorney with Butzel Long who serves as general counsel to the Michigan Press Association.

"Schools have not done a good job of monitoring" who is on their staffs, she said. "If someone is falsely accused ... that can be taken care of."

But if a child has continued contact with a teacher with a criminal record "that can be irreparable," she added.

Some lawmakers agree with Hertz. Sen. Alan Cropsey, a DeWitt Republican, said school boards should have information about all criminal convictions and then decide whether to notify the public about misdemeanors that aren't fireable offenses.

Misdemeanor drunk driving offenses could be important to know if school personnel are driving children to extracurricular events, he said.

But Sen. Michael Switalski, a Roseville Democrat, said it's better to draw a "bright line" now on what is released and consider adding other misdemeanors to the list in the future.

"The wise thing would be to move slowly, properly and to protect the rights of the innocent," he said.

Although the debate over school employee records may not have caused such a ruckus if the original list had been accurate, there's no shortage of attempts in the state to lock government information away from the eyes of the public.

Since the Sept. 11, 2001, terrorist attacks, 48 bills affecting open records have been introduced in the Michigan Legislature, and 22 have become law, an Associated Press analysis has found. Nearly all restricted public access to government information.

Last year alone, 20 such bills were introduced. Six FOIA exemptions passed, including two that exempted criminal background checks on nursing home and adult foster care employees and others that exempted proprietary or financial information from businesses applying for state investment funds.

One bill introduced in 2004 would have banned the release of accident and traffic records of snowplow operators employed by government entities. Another, introduced in 2003, would have exempted audio recordings or autopsy photographs. A 2001 bill would have exempted investigative records of the state racing commissioner and staff.

None of those measures passed. But the tilt is clearly toward closing off public records, rather than opening more of them, Hertz said.

"Between terrorism and concerns about privacy, there's just been what I consider to be an increasing willingness to seal off information," she said. "It's a bad thing. It's saying that we have to trust government. (But) government is made up of people, and they are no more perfect than I am."

The crackdown on what government information should be open to public scrutiny isn't just happening in Michigan.

States have steadily limited the public's access to government information since the attacks, an AP 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.

The attempts to change Michigan's FOIA law since the 2001 attacks continue a trend as government officials over the past three decades have tried to balance the need for openness with the delicate issue of personal privacy.

State universities, for example, won the right to keep presidential searches largely secret in part to protect the identities of applicants. Limitations also have been placed on who can file a FOIA

request and the means of filing. Prison inmates no longer can file FOIA requests, and all requests, no matter the filer, must be done in writing.

Michigan's law also has exemptions for certain types of information whose release would be "a clearly unwarranted invasion" of an individual's privacy, for trade secrets, police investigative records and records that might affect prison security or that are subject to attorney-client privilege.

"Michigan's probably in the middle of the pack" when it comes to the strength of its FOIA laws, Hertz said.

She said she's concerned that the public's oversight will be weakened if government doesn't stand by its decision to protect vulnerable school children by fully releasing the school employee criminal records.

"We say that we care," she said. "To me, the cruelest thing of all is to say that we care, and then not to care at all."

Oakland Press

http://www.theoaklandpress.com/stories/031106/loc_2006031103.shtml

Cox: Technology having effect on information acts

PONTIAC It was evident from the turnout to hear Michigan Attorney General Mike Cox and the number of questions asked that Oakland County residents want access to information from their elected officials.

About 160 people were at Cox's seminar Friday on the Michigan Open Meetings Act and the Freedom of Information Act. The session was conducted in the Oakland County Board of Commissioners auditorium. It was sponsored by The Oakland Press, The Society of Professional Journalism and the Michigan Press Association.

The two acts require public bodies to do business in front of the public and require them to give the public access to information about governmental operations, with some exceptions. Even a subcommittee that narrows down a list of candidates is required to be open because it is making a decision, Cox said.

One thing that was evident during questioning is that today's computer technology might be making it easier for officials to circumvent the Open Meetings Act and the Freedom of Information Act. However, e-mail discussions between a quorum of members of a public body can be considered a violation of the Open Meetings Act, Cox said.

A public meeting "must be held in a place available to the public. All decisions have to be made in an open meeting. All deliberations of a quorum (even without a decision) must be made at an open meeting," Cox said.

There are some exceptions, such as meetings between an attorney and a public body about a real estate purchase.

In addition, e-mails about government actions are considered public documents and are obtainable by the public under the Freedom of Information Act.

"If an issue is coming up on the agenda and you (school board members) are all emailing each other (about it) that is a problem," Cox said. "If you are just canvassing how your colleagues might vote, that is OK," Cox told a Pontiac schools Trustee, Alma Bradley Petrus, in answer to her question.

Dawn Phillips Hertz, attorney for the Michigan Press Association, noted that emails on a school district's computer system are in the possession of a public body and should be available to the public.

Cox said information stored on a computer must be printed out in response to a Freedom of Information Act request. However, he said that is not considered creating a special report just for a FOIA request, something a public body can refuse to do.

The attorney general also said a newspaper or individual can view copies of documents in the public body's office if they cannot pay the fees charged.

Even Cox has his own issues with interpretation that resulted in legal action against him.

He noted that the Detroit Free Press asked for information in connection with the Michigan Gaming Board. Normally, a clerk would copy the information and the cost would be minimal, he said. But, in this case, Cox said, he had to have two attorneys review the files to avoid giving out information protected by attorney-client privilege.

Cox was sued by the Free Press and lost in Oakland County Circuit Court for charging for the cost of searching and reviewing, resulting in a high cost for public information.

Cox said he has taken the case to the Michigan Court of Appeals.

In a news release Friday, Mark Brewer, Michigan Democratic Party chairman, was critical of Cox for giving Friday's talk on the Freedom of Information Act, alleging "Cox has been knowingly trying to deny the public an open and honest government. His gross overcharging was seen by the court as excessive and stifling to free speech in Michigan."

Information on the Michigan Freedom of Information Act

(AP) — Questions and answers concerning the Michigan Freedom of Information Act:

Question: Who's covered by FOIA?

Answer: All state agencies, county and other local governments, school boards, other boards, departments, commissions, councils and public colleges and universities, along with anyone who is an employee or member of those agencies.

Q: Who's not covered?

A: The governor and lieutenant governor, along with the executive offices of both and any of their employees.

Q: What's covered?

A: All records except those specifically cited as exceptions. FOIA applies to any piece of paper, computer files, tapes, photographs, maps, or anything else recorded as text, sound, pictures or symbols.

Q: What's not covered?

A: Specific personal information about an individual if the release of the information would constitute a clearly unwarranted invasion of that individual's privacy; some investigative records compiled by law enforcement; records that could endanger safety at prisons; some trade secrets or commercial or financial information; information subject to attorney-client privilege; applications for university presidencies; and certain other information, including records that would disclose an individual's Social Security number.

Q: What must be done to file a FOIA request?

A: Requests must be made in writing and sent to the FOIA coordinator of the public body.

Q: What happens after the request is sent?

A: The public body must respond to the request within five business days; it also can extend the response an additional 10 business days. If a request is denied, written notice must be provided to the requester within five business days, or within 15 business days if an extension is taken. The public body must provide a full explanation of why the request was denied. Requesters may submit an appeal to the head of the public body or seek judicial review. If a requester goes to court and wins, it's possible to receive attorney fees and collect damages from the public body.

Q: What can be charged for materials requested under FOIA?

A: A government agency may charge a fee for providing a copy of a public record. It also may charge fees to search, examine and review records and to separate exempt information if not charging a fee would result in unreasonably high costs to the public body. The fee must be limited to the actual duplication, mailing and labor costs. The first \$20 of a fee must be waived for a person who is on welfare or presents facts showing inability to pay because of indigence.

Q: What are the penalties for violating FOIA?

A: A circuit court that finds a public body has violated FOIA can award actual and compensatory damages plus punitive damages of \$500.

Q: Who can't file a FOIA request?

A: Prisoners in state, county or federal correctional facilities cannot make FOIA requests.

Q: Where can I get a sample FOIA request letter?

A: The Michigan Press Association has one on its Web site, at <http://www.michiganpress.org/index/84>

Sources: State of Michigan, Michigan Press Association

Indiana

Fort Wayne Journal Gazette

<http://www.fortwayne.com/mld/journalgazette/14080272.htm>

Records access applies to all

Being in prison no bar to getting documents

**By Dan Stockman
The Journal Gazette**

Herbert Foust just wanted to know the dates, charges and amount of bond issued each time William Kahn was held in the Allen County Jail.

It's information state law specifically says must be given to anyone who asks for it. But when Foust asked for it, the response was a cold one.

"Please be advised the information you request requires a subpoena," the Allen County Sheriff's Department wrote in its April 29, 2005, letter.

Not only was that statement not true, but withholding the information is also illegal under Indiana's Access to Public Records Act. The department also failed to cite the law it claimed allowed it to withhold the information – another violation of the law.

The Allen County Sheriff's Department gives the same type of information to reporters and the general public every day. So why did Foust get the brush off?

It might have been his address, which at the time was the Putnamville Correctional Facility in Greencastle, where he was serving almost four years for theft and receiving stolen property, criminal confinement, criminal gang activity and escape.

"That's pretty much what it was," Foust said of the numerous requests he filed across the state that were initially denied. "They told me that."

Foust, who has since been released and is living with his family in Elkhart County, is hardly the first inmate to be denied rights under the state's open records laws. Since July 1, 57 state inmates have filed complaints with the state's public access counselor alleging they were illegally denied access to public documents. In 30 percent of those cases, Public Access Counselor Karen Davis agreed, saying the agency had broken the law. For the general public, about 57 percent of the complaints are found to be a violation.

Many of the complaints from prisoners, Davis said, come because the agencies ignore the request entirely, perhaps assuming that because someone is behind bars that person is no longer entitled to government documents. That is rarely the case, she said.

"We encourage agencies to treat people in like situations the same way," Davis said. "If you would readily mail something to anyone else, you should mail it to a prisoner, too."

Foust filed so many requests and complaints – and had so many ignored by the agencies he was asking for records from – that Davis began forwarding the requests herself, he said. Suddenly, he wasn't being ignored.

“When they saw who it was coming from, they paid attention,” Foust said.

Information for all

Today kicks off Sunshine Week (www.sunshineweek.org), a week dedicated to ensuring American citizens have access to their government documents. In a democracy where citizens control the government, knowing what the government is doing is critical. Lucy Dalglish, executive director of the Reporters Committee for Freedom of the Press, which advocates for journalists and open government, said pushing for access at all levels is especially important now that access is often under attack under the guise of privacy or security fears.

“If Sunshine Week has an impact, it's that the public learns they are the ones entitled to know what's going on,” Dalglish said. “The way you exercise oversight of your government is through access to information produced by your government. Though the most common way is through the media, you as a citizen are also entitled to information about the institutions you are paying for.”

Among the information that has come to light in The Journal Gazette, thanks to the Access to Public Records Act, was that thousands of Indiana school bus drivers have moving violations and some even have drunken-driving convictions but are still allowed to transport children. The law has also been used by the newspaper to show how businesses doing city work contributed heavily in the last mayoral campaign, and that of 30 high-risk dams in the region, 20 need at least basic repairs.

The right to see what the government is up to even extends to those the government has put behind bars, Dalglish said.

“I know of no law out there that says public records are public except when requested by prisoners,” she said. “Just because you're sitting in jail does not mean you do not have the right to ask for information from your government. If they are just flat out rejecting requests from prisoners just because they are prisoners, that's wrong.”

Many of the complaints prisoners file with Davis involve the fees agencies charge for copies of records, and Davis often finds the fees are illegal.

In June 2005, Davis said the \$3 per police report the Fort Wayne Police Department was charging violates the Access to Public Records Act, which limits fees to the actual cost of copies. That fee is still being charged today, however.

Associate City Attorney Carol Taylor said the city is in the process of changing the fee, which must be approved by the City Council, but it is complicated because there are so many departments and so many reports they charge for, and each one has to accurately reflect the costs associated with producing it.

“It's something we're working on,” Taylor said.

Questionable requests

Allen County Sheriff Jim Herman said the initial decision to deny Foust the records he was asking for was a mistake – but one that can easily happen.

“It almost seems wrong that a prisoner should have the same rights to this stuff as anyone else, so because it seems wrong, people think they’re on solid ” Herman said. “You’re constantly ground when they say ‘No, you can’t have it,’ in a training mode.”

Once contacted by Davis’ office, the department produced the records.

Foust said the request for records on William Kahn came because Kahn, then a fellow prisoner at Putnamville, was bragging about things he had done outside the walls.

“He was in there, giving a big story about what he was doing on the streets,” Foust said. “I didn’t believe him, so I filed for the documents, and it turns out he had beat up a kid.”

Kahn was serving time for a 2003 battery of a 4-year-old boy in his care. He has since been released.

“I just used it to verify the truth,” Foust said.

Other inmates’ motives, however, aren’t always so pure.

Clyde Piggie, serving 42 years for an Elkhart County drug dealing conviction, likes to request personnel records on the prison employees where he’s being held. While at the Miami Correction Facility in Bunker Hill, Piggie asked for the files of at least 35 prison workers. After he was moved to the Pendleton Correctional Facility, he asked for more. Adrian L. Broome, serving 45 years for shooting a florist to death in Anderson in 1995, asked for the home address and phone number of a former female prison worker, as well as the address and phone number of her new employer.

“There are cases where it looks like the intention is to harass staff,” said Bob Bugher, legal services director for the Indiana Department of Correction.

The law requires public agencies to release the name, pay, job title, business address and phone number, job description, education and training background, and previous work experience or dates of first and last employment of their employees. They must also release information on the status of any formal charges against the worker and the factual basis for any disciplinary action taken against them.

Access advocates say that information is harmless, but Bugher said that may not be the case for corrections officers.

“In the correctional realm we try really hard when we’re training correctional staff (they should) only impart information to the prisoner population necessary to do your job. Anything of a personal nature is not really appropriate to discuss with the offenders because they could use the information to manipulate the staff,” Bugher said. “Even stuff as innocuous as (what’s required to be released under the law) might potentially be used in some way.”

Davis said the legislature has already asked that question and found the balance it is comfortable with. In addition, the Department of Correction has some extra protections in other areas of the law to protect employees if necessary.

“(Releasing the information) may seem intimidating to the public employee, but all public employees are subject to the same disclosure requirements,” Davis said. Other requests from prisoners, however, are even more frightening.

On Aug. 11, 2005, Michael Jent asked the Fort Wayne Police Department for reports of child abductions and child molestations from 1999 to the present. Three months before, Jent had been sentenced to 238 years in prison for abducting and molesting an 8-year-old Fort Wayne girl.

In August 2004, Jent had lured the little girl to his car, then took her to a vacant house he owned where he molested her. He dropped her off in the Lakeside neighborhood about an hour later. He was found guilty of being a habitual offender and a sexual predator. His records request also asked for “any and all reports made from or against” the girl’s mother.

“I found that really problematic,” the city’s Carol Taylor said. The girl’s mother, who is not being identified to protect her daughter’s identity, called the request “creepy.”

“I’m just amazed he has the right to that in the first place,” she said. “It’s none of his business how many other kids were kidnapped.”

Taylor wrote back to Jent, denying him the records on the grounds they are investigatory records which are exempt from disclosure. She also noted that crimes against minors are confidential under state law.

Jent complained to Davis’ office, which found that the department could have released the daily log the department is required by law to keep. The log is to list the time, substance and location of all complaints or calls for help the department receives, how the department responded, whether a crime was committed and the basic facts of the incident.

The law also requires that if an agency denies someone access to records, it has to cite the specific law that allows them to keep the documents secret, and Davis found the department did not do that.

But Taylor said Jent never followed up on the request after the complaint, so he never received any records.

Despite the distaste caused by some requests filed by inmates, Taylor said the law is her guide.

“I look at what they’re asking for, and I look at the statute,” she said. “My personal opinion doesn’t really come into it.”

She said that’s true even when she gets the same request from the same person over and over and over, a person who has filed so many requests and complaints that Davis acknowledged researching the law just to see whether he could be ignored.

Repeated requests

In the obscure world of records requests filed by prison inmates, Chester Wilms Jr. is one of the standouts.

Wilms, a Fort Wayne man serving 60 years for three counts of dealing cocaine and being a habitual offender, has filed dozens of records requests, resulting in 11 complaints filed with Davis' office. Though many are filed with the Wabash Valley Correctional Facility in Carlisle, where he is held, most are filed with the Fort Wayne Police Department and surround the 1997 case against him.

"I get an enormous amount from Chester, and he's usually requesting the same thing over and over again," Taylor said.

Most of those requests were for a tape recording of the radio traffic during his arrest, which the city initially refused to turn over.

"Taylor said. But "Finally, I said, 'You know, just provide him the tape,' the city couldn't even send it to him, because prisoners aren't allowed to receive tapes, so it had to be sent to a third party.

Wilms then sent the recording to the courts in his attempts to exonerate himself.

"He gave it away, so then he asked for it again," Taylor said.

The city said no, and Wilms complained to Davis, who found that the law requires agencies only to provide one copy of a record.

"I have searched the (Access to Public Records Act) for any provision that would absolve the (Fort Wayne Police) Department of the obligation to continue to respond to your duplicative requests for records, but have found none," Davis wrote to Wilms.

She said that not only had the department met the letter of the law "but has more than fulfilled the spirit of the law" and suggested that if Wilms still believes he's entitled to another tape, he should file a lawsuit for it.

Another inmate, Michael Hunt, filed so many complaints with Davis that he started filing them under his mother's name. Davis quickly nixed that idea. Others have filed complaints the same day they filed the request, and many do not date correspondence, making it difficult to determine whether their complaint is valid, Davis said.

In the end, filing a lawsuit is often the only recourse for anyone denied public records, whether the person is in prison or not. Davis' office exists only to advise on the law, not enforce it. If she finds that access was denied illegally and a lawsuit is filed and won, the agency that denied the records has to pay the requester's court costs and attorney fees, which could be thousands of dollars.

But Davis' lack of enforcement power means agencies, even those who illegally deny inmates records they're entitled to, can get away with denying records even after Davis finds their actions in the wrong unless someone takes them to court.

Former inmate Foust, however, said that's because inmates don't realize they can file suit – and don't even have to pay the filing fee. He said he often took that course of action from behind bars.

He said that once he filed suit, the agencies would usually settle out of court and he would get the records he had asked for.

It was all just a way to ensure he got the documents he was entitled to, he said.

"That's my right."

Public access

When citizens are denied information they feel they have a right to, they can file a complaint with the Indiana Public Access Counselor, who will investigate the complaint and issue a ruling. The opinion does not force the agency to turn over the records, but can be used as evidence in a court case and can lead to the agency paying your attorney fees. For the fiscal year that ended June 30, 2005, the public access counselor's office handled 1,681 inquiries and complaints. That figure includes complaints filed over the Indiana Open Door law, which requires official bodies to meet in public, but about three-fourths of the cases the office handles are public records cases.

Those inquiries and complaints came from:

Public...824 Media...204 Government...653

For the fiscal year that began July 1, 2005, the office has received 168 complaints over access to public records. In 57 percent of those cases, the office found that the agency in question had violated state law in some way.

Source: Indiana Public Access Counselor

OHIO

Cleveland Plain Dealer

<http://www.cleveland.com/news/plaindealer/index.ssf?/base/news/1142501524100950.xml&coll=2>

Trial by fire turned mom into public records activist

John C. Kuehner
Plain Dealer Reporter

Dioxins were a mystery to Teresa Mills a decade ago.

But after tracking a big yellow cloud that hung over her Grove City neighborhood to the Columbus trash-burning power plant, the housewife and mother filed her first records request with the Ohio Environmental Protection Agency. Her education started.

Today, Mills, 50, knows all about dioxins.

And she is especially skillful at shining a light on the Ohio EPA.

For 10 years, Mills has helped residents and grass-roots groups tackling environmental problems get their hands on public records.

She estimates she has filed hundreds of records requests.

"The whole thing with the public records law is you have to know what to ask for," said Mills, who heads the Columbus-based Buckeye Environmental Network, a word-of-mouth, behind-the-scenes two person agency. "If you don't ask for it the way the agency thinks you should, then they will ignore your request."

As a state agency, the Ohio EPA receives hundreds of requests a month to review records, from citizens curious about whether the vacant land they want to buy is contaminated to concerned public watchdog groups.

Lily Aaron, the public information specialist for the agency's Northeast District Office in Twinsburg since 1988, said her one-month record is 86 requests. Last year, 662 people made requests and looked at 1,329 files.

Residents can look at records for water, air and land issues for this 15-county corner of Ohio. This includes sewage, trash and hazardous wastes, drinking water, toxic spills and brownfields.

"A lot of people do not realize how big our filing system can be," she said.

The folks at Ohio Citizen Action and Ohio Public Interest Research Group do. They often file requests.

Ohio Citizen Action has conducted several "Good Neighbor Campaigns" across the state. It has one now focused on reducing the air pollution coming from the Mittal Steel Co. plant in Cleveland.

The group has sought records for air permits and related documents, as well as records for auxiliary businesses connected to the plant.

"The most important thing is, you have to be persistent," said Sandy Buchanan, the executive director of Citizen Action. "You can't assume that just because you have filed a request they will fulfill it. You have to do constant, constant follow-up phone calls."

She said her group could not accomplish what it does without the open records law.

"It's the public's information," she said. "It belongs to the citizens. It does not belong to a bureaucrat in some agency. If we are going to have any check and balance between government and private industry, we need to have access."

Ohio PIRG used public records to show how at least 8 billion gallons of untreated sewage, industrial waste and rainwater poured into Ohio's portion of Lake Erie and its tributaries in 2004.

The group also issues an annual report about how industries violate their state-issued pollution permits.

"The reason why access to these records is so critical is that time and time again here in Ohio, we discover that permit holders are in violation of their permits and are polluting the environment, and the EPA is not doing its job to enforce the permits," said Erin Bowser, Ohio PIRG state director. "But we would not know that unless we saw the records."

It was access to environmental records that opened Mills' eyes. She said that in 1994, she was as naive as some people she works with now. But she and her Grove City neighbors knew something was wrong because of the drastic health issues that appeared.

In their 14-home cul-de-sac, two children had non-cancerous bone tumors, four young women had radical mastectomies and another woman had spots on her brain.

Through records requests, they discovered that Columbus' trash incinerator was releasing extremely unsafe levels of dioxins, a toxic chemical byproduct of incomplete burning of trash.

They lobbied legislators. They held rallies. In less than a year, the plant closed.

Mills said that victory made her a symbol and ignited the hopes of others fighting environmental issues.

She has fought many battles, such as pushing for the American Electric Co. to buy out all homes in Cheshire; moving the River Valley High School/Middle School in Marion from a contaminated site; and achieving more stringent standards for a magnesium plant in Bellevue.

Mills, who has educated herself on many issues, stays out of the limelight and gives it to the citizens she's working with. One way is to teach them how to access public records.

Mills has a template of how to file a records request, which is for specific files or records; or how to ask for a file review, which is an in-office review of all files. Both are covered under the open records law.

"We remind citizens of their rights to this information," she said. "A lot of citizens do not believe you can go into the Ohio EPA and look at their files. It's like a civics lesson."

Often her work is connecting the paper trail, because one Ohio EPA department is unaware of what the other is doing, she said.

Only once in the past 12 years has she been denied a records request, and that occurred last October. She sought the names and addresses of all asphalt plants in Ohio.

She's filed the request three times and each time she has been told the information does not exist.

"Do I believe them, or what?" she said. "I don't believe it, but how can I prove it?"

Akron Beacon Journal

[HTTP://WWW.OHIO.COM/MLD/OHIO/NEWS/14076235.HTM](http://www.ohio.com/mlD/ohio/news/14076235.htm)

State restriction on records included access to health probes

ANDREW WELSH-HUGGINS
Associated Press

COLUMBUS, Ohio - When hundreds of people became ill on a Lake Erie resort island two years ago, businesses eager for answers asked the state for the results of its ongoing investigation.

The Department of Health denied access to the material by citing a new law allowing the agency to hold back such records during a health crisis.

None of the six state laws dealing with records that were enacted since 2001 made it easier for Ohioans to get information maintained by schools, cities and state agencies. Restrictions were approved in response to the Sept. 11 terrorist attacks and out of more general concerns about privacy raised by identity theft and the Internet's growth.

Rep. Bill Seitz, an advocate of protecting personal information contained in public records, said the changes lawmakers have made are responsible reactions to the Internet age.

"As we continue to create more and more records with more and more potential to destroy people's privacy, we need to rein in those which have that potential," said Seitz, a Republican from Cincinnati.

The state's first response to the attacks, a bill enacted into law in 2002, banned the release of security and infrastructure records kept by public offices out of concern they could fall into the wrong hands.

Later restrictions and proposals had more to do with general privacy issues.

A 2002 proposal that died in committee would have restricted the release on the Internet of photos of homes and businesses made for reappraisals, out of a concern criminals could use the information to plan break-ins.

Another 2002 bill that did become law prohibited the release of the home addresses of firefighters and emergency medical technicians, expanding a pre-Sept. 11 exemption available for police officers. A bill pending in the House would expand that protection to probation and parole officers.

In 2003, lawmakers put the names of people with concealed weapons permits off-limits to the public while reluctantly agreeing to allow reporters to ask for the names by county.

A 2004 survey by The Associated Press and other media organizations found that public employees followed the law only about half the time when asked to provide common records on an unconditional and timely basis.

In response, Rep. Scott Oelslager, a Republican from Canton who has fought to keep records open, introduced legislation that would require public officials to provide records within 10 days with extensions allowed based on the size of a request. The bill was stalled for about a year. It is moving again, although it faces another snag over transferring access to court records from the Legislature to the Ohio Supreme Court.

In an update to the 2004 survey, college students asking for common records like faculty salaries had their requests filled properly only one in four times, according to the survey sponsored by Ohio University's journalism school in December and January at Ohio's 13 four-year colleges and universities and two medical schools.

Their budgets stretched thin and other issues pressing, fewer public advocacy groups are able to lobby against bills closing off records, said Frank Deaner, executive director of the Ohio Newspaper Association.

"There's not a strong enough week-in, week-out reinforcement of the need for access to public records," Deaner said.

The restriction on the release of public health records was included in a 2003 updating of Ohio's bioterrorism laws.

The change was needed to guard against the premature release of inaccurate information as a health crisis unfolded, said Jodi Govern, the Health Department's general counsel.

The department also was worried that people with information about the cause of an outbreak of disease might not come forward if they thought their names would be made public.

In addition, the department had seen too many instances of officials spending more time responding to public records' requests during emergencies than researching the cause, Govern said.

"This is not like a total blackout," she said. "We have done a fair job at releasing information on a periodic basis during these investigations to keep people up to date."

When lawmakers debated the law, some Marion residents protested the change, worried that a fight they waged in the 1990s for information about a cluster of leukemia cases among high school graduates would be impossible today.

"If there's a threat of any kind, people need to know," said Roxanne Krumanaker, 62, whose daughter, a River Valley high school graduate, survived leukemia.

The health department has received only two public records requests under the 2003 change, and denied both. Both were from attorneys looking for information during the South Bass Island outbreak.

The department concluded that septic tanks on the island contributed to widespread groundwater contamination that was the likely source of the illness.

William Smith, an attorney representing a campground whose business was hurt during the investigation, said the new law just gives the Health Department room to hide its mistakes.

"If they withhold the information they can keep everyone in suspense longer," Smith said. "It gives them time to make up a better story as far as I was concerned."

Govern said it was still early to determine whether the law has helped the department investigate health crises.

"If your question is, 'Has this law helped?' I think my answer would be probably, 'I think so, but it's hard to quantify,'" Govern said.

The Mount Vernon News

<http://www.mountvernonnews.com/local/06/03/16/public.records.html>

No name required for public records

By Dylan McCament, *News Staff Writer*

MOUNT VERNON — Ohio Sunshine laws refer to the Ohio Public Records Act and the Ohio Open Meetings Act which protect citizens' rights to access public records and to attend public meetings.

Citizens who request a public document are under no obligation to give their name, said Jennifer Detwiler, spokesperson for Ohio Auditor Betty Montgomery.

With this in mind, Michelle Hartman of Mount Vernon said she got irritated when asked for her name after she requested copies of two marriage licenses from the Knox County Probate-Juvenile Court. She was told they couldn't give her the copies unless she gave a name for their receipt.

"Why do you have to give your name for \$0.20 copies?" Hartman said.

Jeffrey Williams, magistrate, Knox County Probate and Juvenile Court, said it's simply a matter of how the computer system works: a name must be entered to generate a receipt. Anyone is entitled to a copy of a public record upon paying the appropriate fee. The office has to generate a receipt, and often times individuals want one. The name entered could be Jane Doe or John Smith, but something has to be entered, he said.

"You might walk in and ask for a copy of a marriage license. No one would ask, 'well, who are you?' Williams said. "We're not trying to track people."

Besides marriage licenses, copies of wills, estates, guardianships, and records pertaining to child custody, visitation, and support are all available at the clerk's office, he said. Juvenile records — delinquent, unruly and juvenile traffic offenses — are not public record. The underlying reason why they are not public is the protection of the juvenile, Williams said.

Many other types of public documents are available from local government offices in the county — some of which is available online. At the Knox County Recorder's Office, residents can obtain records a wide variety of public documents pertaining mainly to real estate transactions — deeds, mortgages, leases, liens, as well as soldier discharges, partnerships and power of attorney. Information on divorces, automobile title transfer and court cases at the Knox County Clerk of Courts for a nominal fee. Some information on cases — civil, criminal, domestic relations and court of appeals cases — is available online at www.knoxcountycpcourt.org.

The state auditor's Open Government Unit serves to educate the public and help public officials understand their obligations under the Ohio Public Records Act and the Ohio Open Meetings Act, usually referred to as sunshine laws. On the auditor's Web site — www.auditor.state.oh.us — citizen's rights under both acts are listed.

Rights under the Public Records Act entitle citizens to inspect records promptly and receive copies within a reasonable amount of time during the public office's regular business hours. In general, public office can charge no more than the actual cost of the copies requested. Requestors are not required to fill out a form or provide a written request. However, the records request must be specific; a request for all records on a given topic may not be "legally improper," according to the auditor's Web site.

Rights under the Open Meetings Act require public bodies to take official action and discuss official business in a meeting that is open to the public. The public body has to give notice of the time and location — and sometimes the purpose — of its meetings. Residents have the right to receive advance notice of the meetings, if they register and pay an appropriate fee. They also have the right to inspect or receive copies of the meeting minutes. Though anyone has the right to attend a public meeting, a person who behaves in a disruptive way can be removed.

Some restrictions exist. A public body can meet in executive session — that is, in private — under certain circumstances and can decide who attends and who is excluded. Personnel matters, the purchase of property, pending litigations and collective bargaining are usually the topics of these sessions. All meetings must begin and end in an open meeting — that is, an executive session must fall in between.

March 12 through 18 is Sunshine Week and is an effort on the part of the press and supporters of open government to raise awareness.

Cincinnati Enquirer

<http://news.enquirer.com/apps/pbcs.dll/article?AID=/20060312/EDIT03/603120369/1023/EDIT>

Ohio government keeps bevy of secrets

BY GREGORY KORTE | ENQUIRER STAFF WRITER

If it seems state and local governments are keeping more secrets these days, it may be because governments have more secrets to keep.

The list of exceptions to the Ohio Public Records Act has exploded in recent years, even as the Internet has made it easier to disseminate many records that are public.

Public records in Ohio used to be simple. With few exceptions, if the government kept it, the public could see it.

Ohio's first Constitution went further than the First Amendment, guaranteeing not only the right to free speech but the right to know. It guaranteed "that the printing presses shall be open and free to every citizen who wishes to examine the proceedings of any branch of government, or the conduct of any public officer, and no law shall restrain the right thereof."

That provision was rewritten in later constitutions, but common-law traditions kept most public records open for three-quarters of Ohio's history.

By 1963, the area became sufficiently complicated that legislators wrote the Ohio Public Records Act. The original law had just four exceptions: medical records, confidential law enforcement records, trial preparation records, and probation and parole records. The law remained relatively unchanged through the 1990s.

Then came the information age.

The Ohio Public Records Act is now more than 3,000 words long. The law, codified as Ohio Revised Code Section 149.43, contains 25 exceptions - including adoption records, the home addresses of police officers and firefighters, and records about juveniles participating in government-sponsored recreational activities.

And then there's the so-called "kitchen sink" exception: records prohibited to be released under state or federal law.

At last count, there were 272 provisions of state law dealing with public records, according to the Ohio Attorney General's 2005 Ohio Sunshine Laws Update. That's 22 percent more than there were five years before.

"The number never gets smaller. It always gets larger," said Tim Smith, director of the Ohio Center for Privacy and the First Amendment at Kent State University. "And then the Ohio Supreme Court takes the exceptions that exist and broadens them."

Many of the exceptions are easily understandable. Social Security numbers are not public record. Neither are income tax returns or informants for the Ohio Organized Crime Task Force.

For others, the need for secrecy isn't as readily apparent:

- Complaints against cemeteries filed with the Ohio Cemetery Dispute Resolution Commission.
- Applications for junkyard licenses.
- State Medical Board investigations of acupuncturists.
- Records about water pollution that might disclose a "trade secret" of the polluter.
- Reports of adults abused by caretakers.

How do these exceptions find their way into Ohio law?

That, too, is a secret. Under a 1999 amendment, bill-drafting records of the Legislative Service Commission are no longer a matter of public record. Former Senate President Dick Finan, R-Evendale, pushed through that amendment after the Akron Beacon Journal used the records to

discover that then-state Sen. Roy Ray - who had been paid \$161,500 by Ohio Edison - allowed the utility to write a bill bailing out the Akron-based company.

The list of closed records provides a road map to state government involvement in almost every area of commerce, health and public safety. The state collects records about accountants, banks, developers, hospitals, mine operators, polluters, railroads and utilities - but agrees to keep them secret in the interest of privacy, protecting proprietary business information, or security.

But is state government collecting too much information in the first place?

"The government collects information that it doesn't need, and then decides to keep it private, which is the worst of all possible worlds," said Kent State's Smith. "Instead of stopping the intrusiveness, we'll just stop telling you about it."

About Ohio's public records laws

The Ohio House of Representatives is scheduled to vote this week on what could be the most sweeping update of the Ohio Public Records Act in more than a decade.

House Bill 9, sponsored by state Rep. W. Scott Oelslager, R-Canton, would require public records training for state agencies, extend the deadline for releasing records to 10 days in most cases, and allow fines of up to \$1,000 for agencies that refuse to provide records. It also sets up a state office to handle complaints from people who say they are denied records.

Other hot topics in Ohio's public records debate include:

- Whether journalists should have access to the names of concealed-carry permit holders. The "journalist exception" - increasingly popular among state lawmakers - was a compromise to get Gov. Bob Taft to sign a bill allowing concealed carry in 2004, but conservative lawmakers want it taken out after some newspapers published lists of permit holders in the newspaper.
- The availability of Social Security numbers in public records. Case law has been clear that the identifier is not public record. But there are potentially millions of records filed with government agencies - tax liens, speeding tickets, mortgages and business documents - with Social Security numbers on them.
- The status of records held by government contractors. The state auditor is seeking to audit records from a nonprofit Akron halfway house that gets almost all of its funding and clients from the county judicial system. She's taken her fight all the way to the Ohio Supreme Court. Nonprofits from all over the state - including food pantries, homeless coalitions, Head Start agencies and the state's E-check contractor - argue that they shouldn't have to disclose how they spend taxpayer money.