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More information access requests made by public

By PAUL CARRIER

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AUGUSTA -- Despite the Maine Freedom of Access law's reputation as a tool for reporters, most of the applicants at the DEP are not journalists, but are people or organizations directly affected by agency decisions.

The same is true in other states and at the federal level, according to Charles Davis of the Missouri-based National Freedom of Information Coalition.

Access laws aren't just for reporters any more -- if they ever were.

"I think the perception is out there that FOI is a special interest of the press," Davis said, but most of the people and groups using federal and state access laws are not journalists or news organizations.

In Maine, the law protects most access to public records and to government meetings at all levels of government within the state, but it is not all-inclusive.

The public-records section of the law has about 15 exceptions, including legislators' working papers and documents relating to negotiations. And the open-meeting section of the law allows closed-door meetings under several circumstances, such as to discuss personnel matters, disciplinary action against students, real-estate deals or labor negotiations.

Although there is no centralized clearinghouse for who is requesting what under the Maine law, several high-profile cases show that the law is not a weapon wielded by the news media, but rather is something anyone can use to get information from the government.

One of the most sweeping examples involves ongoing efforts to clean up the Androscoggin River. Recent requests filed by environmentalists, businesses and news organizations looking for information about the cleanup plan triggered the release of important documents on former DEP Commissioner Dawn Gallagher.

Those documents showed that Gallagher blocked a violation notice against International Paper in Jay around the end of 2003 to try to win support for a river cleanup plan from state Rep. Thomas Saviello, a Wilton Democrat who is the Jay mill's environmental manager. Gallagher resigned in December.

Using access laws is "part and parcel of environmental law and environmental-science work" and regulated Maine businesses are now "making use of FOA access at a level that is unprecedented," said lawyer Steve Hinchman of the Conservation Law Foundation.

Individuals, too, should use the state's law, he said, because it can provide valuable information on how the government is handling everything from the construction of a road to the installation of a street light.

The Christian Civic League of Maine used the law in recent months to obtain information about a December trade mission to Cuba led by Gov. John Baldacci, as well as on Baldacci's decision to sign an oil deal with Citgo Petroleum. That company, which is owned by the Venezuelan government, agreed to provide discounted oil to Maine this winter to help poor Mainers heat their homes.

The league has been highly critical of both ventures. It used its Web site to report what its FOA requests turned up, including photographs of Baldacci and other Maine politicians meeting with Cuban leader Fidel Castro, whom the league describes as a "detested dictator."

Tim Russell, the league's spokesman, said his organization filed multiple FOA requests with the governor's office; House Speaker John Richardson, D-Brunswick; and Dr. Donald Hoenig, the state veterinarian. Baldacci, Richardson and Hoenig all took part in the trade mission. Hoenig did so because Maine had sold 33 dairy cows to the Cuban government a few months earlier and the December trade talks dealt in part with the possibility of additional cattle sales.

Russell noted that the law "is usable by an individual citizen," and without too much difficulty. "I think if more people realized how easy it is, they might use it more readily," Russell said.

On the national scene, the federal Freedom of Information Act, or FOI, has become "a very valuable research tool," said Shenna Bellows, executive director of the Maine Civil Liberties Union.

Last June, the MCLU joined other state affiliates of the American Civil Liberties Union in sending federal FOI requests to the FBI, asking if that agency had files on various individuals and organizations. The FBI disclosed that it had an e-mail in its files that the Maine Coalition for Peace and Justice sent to members in February 2004, asking people to attend a rally in Washington, D.C., called the Million Worker March.

Since then, the MCLU, working with other groups, has filed new federal FOI requests with six branches of the Department of Defense, asking if they have monitored the activities of various Maine groups and organizations. Those FOI requests are pending.

"Government is as transparent as the people make it," said Davis of the National Freedom of Information Coalition, and one way to assure transparency is for the public to use state and federal access laws. As Hinchman, the environmental lawyer, said of the Maine law: "It's an open door to the workings of government.

The Monument News Gray

<http://www.monumentnews.com/2006/news/316/316e.shtml>

It's Sunshine week

Nation celebrating with articles, events

Open Government in the United States

Let the sunshine in...the sunshine that illuminated the inner workings of government. It's Sunshine week, a national initiative to open a dialogue about the importance of open government and freedom of information. Spearheaded by the American Society of Newspaper Editors, with a grant from the John S. and James L. Knight Foundation, the effort expands on the Sunshine Sunday concept begun in Florida in 2002 and since observed in several states.

It is ironic-although perhaps emblematic-that as we near the 40th anniversary of the signing of the Freedom of Information Act, there is a legal dispute over release of documents from the administration of the very president who signed the act in 1966, Lyndon B. Johnson.

But that's precisely what FOIA was intended to do: Empower people to not only find out what their government is doing, but also to question that authority when that access is denied.

The irony is that Johnson has been described by journalist Bill Moyers, who was the president's press secretary at the time, as being brought "kicking and screaming" to the table to sign the legislation. Nevertheless, Johnson later said he signed it "with a deep sense of pride that the United States is an open society in which the people's right to know is cherished and guarded."

The Origins of Open Government

Open government is about more than the Freedom of Information Act. There are many "sunshine" laws across the country regulating access to government meetings and documents at the state and local level. There are issues of overclassification and "pseudo-classification" of information. The ongoing debate about cameras in courtrooms is one of open government. Any time lawmakers at any level try to unnecessarily stifle the public's right to know, it raises issues about the importance of open government.

The issue and importance of public access to government predates passage of FOIA. In fact, though not codified in the Constitution, it was presumed as a basic tenet of the new United States government. Of course then, as now, the need for controlled, reasonable secrecy was recognized. But a government for, by and of the people was going to require those people to make informed choices as they participated in their new government.

Fast forward a couple of hundred years. The nation has endured the Civil War, World War I, which ushered in unprecedented levels of government secrecy, World War II, the Cold War, Vietnam, Watergate and now the War on Terrorism. An excellent overview of government secrecy to 1997 is in Appendix A of the "Report of the Commission on Protecting and Reducing Government Secrecy."

"Excessive secrecy," the Commission wrote in 1997, "has significant consequences for the national interest when, as a result, policymakers are not fully informed, government is not held accountable for its actions, and the public cannot engage in informed debate.

"This remains a dangerous world; some secrecy is vital to save lives, bring miscreants to justice, protect national security, and engage in effective diplomacy. Yet as Justice Potter Stewart noted in his opinion in the Pentagon Papers case, when everything is secret, nothing is secret."

As the Commission stated, "Greater openness permits more public understanding of the government's actions and also makes it more possible for the government to respond to criticism and justify those actions. It makes free exchange of scientific information possible and encourages discoveries that foster economic growth. In addition, by allowing for a fuller understanding of the past, it provides opportunities to learn lessons from what has gone before-making it easier to resolve issues concerning the government's past actions and helping prepare for the future."

In an October 2005 speech, former Congressman and Co-chairman of the 9/11 Commission Lee H. Hamilton remarked that "too much information is classified." Hamilton, now president and director of The Woodrow Wilson International Center for Scholars, said that, "Some estimates of the number of classified documents reach into the trillions. Several senior officials have estimated that more than 50 percent of classified information does not need to remain secret. During our work on the 9/11 Commission, we repeatedly came across information that was classified that was already publicly known.

"Tom Kean, chairman of the 9/11 Commission-and one not accustomed to dealing with classified material-must have asked me scores, if not hundreds, of times: why is this material classified? I never had a very satisfactory answer for him," Hamilton said, adding, "And the trend is toward more and more classification."

The Trend Toward Secrecy

As it nears its 40th birthday, FOIA is looking more than a little worn around the edges. The past several years have been particularly difficult. The first visible symptom came in October 2001, when then-Attorney General John D. Ashcroft issued a memo to federal agencies telling them to no longer presume the public had a right to government information and to look instead for a legal basis to turn down FOIA requests.

Until recently, the evidence linking the Ashcroft memo to increased government secrecy was anecdotal. That is until the Coalition of Journalists for Open Government analyzed FOIA requests and denials in 2000 and 2004.

CJOG found that even though the number of requests processed fell 13 percent, the use of three particular exemptions to deny FOIA requests-Exemption 2, information about internal agency procedures; Exemption 4, protecting trade secrets and commercial and financial information; and Exemption 5, inter- or intra-agency memos or letters-increased notably.

There has been a clear increase in utilization of those exemptions specifically mentioned in Ashcroft's 2001 memo and in the subsequent directive from White House Chief of Staff Andrew Card.

The Information Security Oversight Office, a division of the National Archives and Records Administration, reported that from 2001 to 2004, the number of annual classification decisions jumped from 8.6 million to 15.6 million. In its "2004 Report to the President," ISOO also reported that the total number of pages declassified fell dramatically from slightly more than 100 million in 2001 to 44.4 million in 2002 and has continued to decline, charting at just 28.4 million in 2004.

Sunshine Week and the Quest for Open Government

Responding to this spreading culture of secrecy, the American Society of Newspaper Editors, with a grant from the John S. and James L. Knight Foundation, launched the first national Sunshine Week in 2005. The Sunshine Week concept had proven effective in Florida, where it began as Sunshine Sunday in 2002, and then in other states in focusing a critical mass of attention on the open government issue.

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.

Vermont

Battleboro Reformer

http://www.reformer.com/headlines/ci_3591553

Government secrecy rules

By EVAN LEHMANN, Reformer Washington Bureau

Saturday, March 11

WASHINGTON -- More than four years after the Sept. 11, 2001, attacks, government secrecy is increasing in the United States.

Agents with greater police powers to wage war on terror can probe e-mail, obtain citizens' telephone logs and study their financial records -- all in secret, as allowed by a controversial provision in the Patriot Act.

And federal agencies are quietly removing thousands of public documents from their Web sites, a move that limits public access on thousands of topics and reflects what open government advocates say is the administration's reflexive tendency to keep information from public view.

"This administration has embraced secrecy as a right," said Steven Aftergood, director of the Project on Government Secrecy at the Federation for American Scientists.

There has been methodical shifting of unclassified material -- from the Pentagon's internal phone book to descriptions of existing military weapons and much more -- from public to private domains. Those efforts are the filter-down product of an administration that engineers secret policies -- like detainee torture and warrantless eavesdropping on Americans -- without consulting Congress.

"The problem is everything is considerably less accessible than it was before," said Scott Armstrong, a former investigative reporter with The Washington Post and founder of the National Security Archive at George Washington University. "The default is now secrecy. In a democracy, the default is openness."

The administration has greatly increased the number of documents it stamps classified, from 3.6 million pages in 1995 to 15.6 million in 2004, according to the Information Security Oversight Office. At the same time, the number of pages being declassified, which generally occurs after 25 years, plummeted from 20.4 million in 1997 to 28.4 million in 2004.

"They've taken thousands of documents that were public for years and said 'let's classify them,'" said Sen. Patrick Leahy, D-Vt., a longtime proponent of increasing access to the government. "If other countries were doing this, we'd be laughing at them."

White House spokesman Ken Lisaius said Bush "believes the government should operate as openly as possible," but added that "certain types of information must be protected" if disclosure threatens national security or criminal probes.

Jim VandeHei, White House correspondent for The Washington Post, said administration officials are wary of speaking freely about day-to-day business, and closely guard alternative views produced by internal debate.

"I think the entire administration has had a penchant for secrecy," VandeHei said. "The result is the public ends up knowing a lot less about what the government is doing."

There are officials who speak with reporters, revealing secret programs and coverups, but the Justice Department is pursuing efforts that could also slow the flow of source-derived information.

Investigators are reportedly searching for government officials who told The New York Times of the Bush administration's warrantless surveillance program and The Washington Post of secret CIA prisons in foreign countries, to which detainees captured in Iraq and Afghanistan were rendered.

The Bush administration's secrecy has been permitted to grow under a Republican-led Congress with little interest in investigating the White House.

Democrats on the House Committee on Government Reform said last year that the panel issued 1,052 subpoenas to the Clinton administration between 1997 and 2002. The same panel, by contrast, had issued just three subpoenas to the White House during Bush's first five years in office.

Congressman Bernard Sanders, I-Vt., a member of the government reform committee, said in a statement that the White House is home to "perhaps the most secretive administration in the modern history of the United States. Whether it was the original

planning for the war in Iraq, or energy policy meetings with the big oil companies, or attacks on our constitutional rights, the Bush administration has made it clear that they do not believe in open government."

Sen. James Jeffords, I-Vt., said in a statement that Bush and his administration have "taken secrecy in the federal government to a new extreme. We all understand the need for secrecy in what are truly national security issues, but the Bush administration is withholding information that has nothing to do with national security."

Leahy and Jeffords recently voted against reauthorizing the Patriot Act, saying it contains too many threats to civil liberties.

Leahy, the senior Democrat on the Judiciary Committee, has led the effort to insert civil protections into the bill. He supported various provisions offering civil protections, including one that requires the Justice Department to issue a report to Congress on how many national security letters it issues.

The letters are perhaps the most contentious, and secretive, aspect of the Patriot Act. They can be written by federal agents with no court oversight and act as an administrative subpoena.

Bennington Banner

http://www.benningtonbanner.com/headlines/ci_3596728

Gov't secrecy growing in U.S.

EVAN LEHMANN, Banner Washington Bureau

Monday, March 13

WASHINGTON — More than four years after Sept. 11, government secrecy is increasing in the United States, quietly closing doors to citizens, opening them to federal agents and fueling concern that objectors will be branded unpatriotic, according to secrecy experts and lawmakers.



Sunshine Week

YOUR RIGHT TO KNOW

Agents with greater police powers to wage war on terror can probe e-mail, obtain citizens' telephone logs and study their financial records - all in secret, as allowed by a controversial provision in the Patriot Act.

Amid book stacks at the National Archives, meanwhile, thousands of declassified historical documents have been made secret again since 1999, alarming historians and marking a sharp overall increase in classifying information.

And federal agencies are quietly removing thousands of public documents from their Web sites, a move that limits public access on myriad topics and reflects what open

government advocates say is the administration's reflexive tendency to keep information from public view.

"This administration has embraced secrecy as a right," said Steven Aftergood, director of the Project on Government Secrecy at the Federation for American Scientists. "The problem is the line has been drawn in the wrong place, and we're keeping the wrong things secret." Experts are not concerned with secrets embraced by conspiracy theorists, like whether a grassy knoll shooter killed President John F. Kennedy. And they agree that information relating to national security should usually remain hidden.

There's a more subtle, and harmful, form of secrecy, they say: a methodical shifting of unclassified material - from the Pentagon's internal phone book to descriptions of existing military weapons and much more - from public to private domains.

Those efforts are the filter-down product of an administration that engineers secret policies - like detainee torture and warrantless eavesdropping on Americans - without consulting Congress, the experts say.

"The problem is everything is considerably less accessible than it was before," said Scott Armstrong, a former investigative reporter with The Washington Post and founder of the National Security Archive at George Washington University.

"The default is now secrecy," he said of the administration's attitude toward disclosure. "In a democracy, the default is openness."

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At the same time, the number of pages being declassified, which generally occurs after 25 years, plummeted from 204 million in 1997 to 28.4 million in 2004.

"They've taken thousands of documents that were public for years and said 'Let's classify them,'" said Sen. Patrick Leahy, a longtime proponent of increasing access to the government. "If other countries were doing this, we'd be laughing at them."

White House spokesman Ken Lisaius said President George W. Bush "believes the government should operate as openly as possible," but added that "certain types of information must be protected" if disclosure threatens national security or criminal probes.

"The administration does its best to strike that important balance between transparency and the protection of information when disclosure would be harmful," Lisaius said.

Bush issued an executive order in December, enhancing the process by which federal agencies process millions of freedom of information requests received annually.

The order requires agencies to appoint a chief officer to oversee the requests, with which they must comply under law. It also establishes liaisons who the public can

contact to get updates about their requests and requires each agency to submit a review of its disclosure process and suggest improvements this June.

he order is a positive step, said Tonda Rush, director of public policy for the National Newspaper Association.

But she suspects Bush issued the directive to deter Congress from passing a similar law, the content of which the executive order mirrors. The move forward, she added, follows years of leadership under the Bush administration that encouraged limited compliance with FOIA requests.

"There are a lot of trends going on that are worrisome, if you're used to working in an open society," Rush said. "The government is clearly more secret."

It's not only record requests that are met with resistance.

Jim VandeHei, White House correspondent for The Washington Post, said administration officials are wary of speaking freely about day-to-day business, and closely guard alternative views produced by internal debate.

"I think the entire administration has had a penchant for secrecy," VandeHei said. "The result is the public ends up knowing a lot less about what the government is doing."

There are, however, officials who speak with reporters, revealing secret programs and cover-ups.

Sources unmasked the controversial domestic surveillance program authorized by President Bush after Sept. 11.

Another revealed that the Army misled the public surrounding the death of professional football player Pat Tillman, a Ranger killed by friendly fire in Afghanistan in 2004. The military initially said Taliban forces killed Tillman, an account that lingered for three weeks after his death.

But the Justice Department is pursuing efforts that could also slow the flow of source-derived information.

Investigators are reportedly searching for government officials who told The New York Times of the warrantless surveillance program and The Washington Post of secret CIA prisons in foreign countries, to which detainees captured in Iraq and Afghanistan were rendered.

"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," Porter Goss, director of the Central Intelligence Agency, told a Senate committee recently.

Observers say the administration's secrecy was permitted to grow under a Republican-led Congress with little interest in investigating the White House.

Democrats on the House Committee on Government Reform said last year that the panel issued 1,052 subpoenas to the Clinton administration between 1997 and 2002. The same panel, by contrast, had issued just three subpoenas to the White House during Bush's first five years in office.

"In this case the executive is the most verbose and secret in history, and the Congress is probably the most cowardly" since the McCarthy era of the 1950s, said Armstrong of the National Security Archive.

Congressman Bernard Sanders, I-Vt., a member of the government reform committee, said in a statement that the White House is home to "perhaps the most secretive administration in the modern history of the United States."

"Whether it was the original planning for the war in Iraq, or energy policy meetings with the big oil companies, or attacks on our constitutional rights, the Bush administration has made it clear that they do not believe in open government and a vigorous discussion of the issues," Sanders added.

Sanders declined to be interviewed for this story through a spokeswoman. In fact, he hasn't spoken with the Washington bureau of the Banner since spring 2005. Sen. James Jeffords, I-Vt., said in a statement that Bush and his administration have "taken secrecy in the federal government to a new extreme."

"We all understand the need for secrecy in what are truly national security issues," Jeffords said. "But the Bush administration is withholding information that has nothing to do with national security."

As the senior minority member of the Senate Environment and Public Works Committee, Jeffords said he has seen secrecy "first hand."

"The administration is pushing a major change to the rules under the Clean Air Act, yet refuses to provide the committee with critical information about the impact of that change on public health and the environment," he said. "This is information developed at taxpayer expense, yet unavailable to the public."

Leahy and Jeffords recently voted against reauthorizing the Patriot Act, saying it contains too many threats to civil liberties.

Leahy, the senior Democrat on the Judiciary Committee, has led the effort to insert civil protections into the bill. He supported various provisions offering civil protections, including one that requires the Justice Department to issue a report to Congress on how many National Security Letters it issues.

The letters are perhaps the most contentious, and secretive, aspect of the Patriot Act. They can be written by federal agents with no court oversight and act as an administrative subpoena. Agents can obtain e-mail, telephone and financial records with the letters. Until now, Congress had no authority to demand reports about the number of letters used. Leahy also offered separate legislation this week that would sunset the use of National Security Letters in four years.

"It's far more secret," Leahy said of the administration in an interview. "It ends up hurting both them and the American people."

Privacy behind curtailed access to public records

The Associated Press

MONTPELIER (AP) — Access to public records in Vermont during the past five years has been influenced by three trends: privacy concerns and fear of identity theft, new worries about security, and growing pains tied to the transition from paper to electronic records.



In 2003, lawmakers passed a measure allowing state officials to block public access to architectural drawings of state buildings. Then Buildings and General Services Commissioner Thomas Torti argued that the stepped up secrecy was a post-Sept. 11 security measure.

The move came after mental health advocates got hold of drawings of a planned renovation at the Vermont State Hospital in Waterbury and were able to show that a plan to add more patient rooms would violate federal guidelines by not providing enough recreational space. Town land records in Vermont formerly allowed wide-open access to property owners' Social Security numbers, which can be used to open bank accounts or obtain credit and which are a favorite target of identity thieves. That changed in 2004, when the Legislature passed a law saying land records would remain open, but Social Security numbers were to be removed from them.

Several pieces of legislation have been aimed at getting state agencies to organize their records better and put them in digital format. Legislation passed last year calls for the secretary of administration - the top aide to the governor - and the state archivist "to develop a comprehensive strategy for the management of all records created by state agencies."

A reporters' shield law proposed in 2005 did not pass last year and is not expected to this year. The proposal came as the state Supreme Court considered whether to order Burlington television station WCAX to give authorities outtakes from coverage of a riot at the University of Vermont the night in October 2004 when the Boston Red Sox beat the New York Yankees in the American League championship series. The court ruled for the state and against the television station in August.

In July of last year, a court ruled for the first time that executive branch officials enjoyed a "deliberative process privilege," saying they did not have to provide an environmental group with e-mails, memos and other documents prepared by staff at the Agency of Natural Resources as they drafted new industrial storm water runoff rules.

The Democratic-controlled House last month passed a bill that would bar the use of the deliberative process exemption to the public records law. The Democratic-controlled Senate is expected to follow suit. Republican Gov. James Douglas has said he would only support the bill if the legislative and judicial branches also were required to turn over documents prepared during deliberation on issues, and if it

applied to local government as well. The House added a provision saying the Legislature also would be barred from using the deliberative process exemption.

http://www.benningtonbanner.com/localnews/ci_3612879

How to file a public records request in Vermont

CHRIS PARKER, Staff Writer

BENNINGTON — Filing public records requests may be routine for those in the press, but few everyday citizens have a clue as to how to do it.



The requests, authorized under Vermont's Public Records Act, give people access to a treasure trove of government records. Such records are defined as any "papers, documents, machine readable materials or any other written or recorded matters regardless of their physical form or characteristics that are produced or acquired in the course of agency business."

In layman's terms, that's everything from the phone bill of your town manager to contracts between a municipality and an engineering firm and correspondence leaving a school office.

"It's central to the principle of democracy that government is accountable to the people," says Vermont Secretary of State Deborah Markowitz. "Government can't be accountable if everything is behind closed doors and secret."

Access to public documents and meetings, she said, gives citizens information about what government is doing and allows them to get involved.

Case law says government officials can't ask those who make requests for information why they are doing so. "Your motive in asking for the information is irrelevant," says Markowitz.

However, she says, officials can ask questions about the request if it is unclear what specifically is being requested, she said. Officials may occasionally hesitate giving out information, particularly in light of new privacy rights and laws being passed across the country.

During an office's regular business hours, citizens have access to hundreds of public documents and can make copies. Copying fees vary.

Markowitz advises people to be as specific as possible when filing public records requests, otherwise government agencies might argue about exactly what information is being sought.

After a person files a records request, the responsible agency "shall promptly produce the record for inspection."

If the agency considers the record exempt from inspection, within two business days it must certify in writing the reason access is being denied. The agency must also notify the person making the request of his/her right to appeal to the head of the agency.

After an appeal is filed, the agency director then has five business days to respond. If any part of the appeal is upheld, the agency must notify the person making the request.

Penalties for improper withholding of public records range from the court assessing the agency reasonable attorney and other litigation costs to possible disciplinary action.

Overall, says Markowitz, citizens have good access to public documents in Vermont on both a state and local level.

"People (in government) really bend over backwards to help people get information," she says.

For more information about the public records and the right-to-know, an official fee schedule for copies of public records, and model letters for filing public records requests, visit vermont-archives.org/records/access/pubrec.html.

Connecticut

Norwich Bulletin

<http://www.norwichbulletin.com/apps/pbcs.dll/article?AID=/20060312/NEWS01/603120307/1002>

More records go online

By RAY HACKETT

Norwich Bulletin

COLCHESTER -- The application form for a vendor's license, the registration form for a summer youth program or the minutes and agendas for municipal meetings are only a computer click away.

That is, of course, if you want that information from the Town of Colchester. But If you're looking for something as simple as how much taxes you might owe in nearby Windham, it isn't quite that easy.

"I was very disappointed," said Michael Haney of Windham, who went looking for his tax records on the town's municipal Web page. "It was pretty case closed. You can't access very much at all."

Today is the start of national Sunshine Week, an effort by media around the country to shed light on the public's right to know. The first effort was launched March 13, 2005.

"This is not just an issue for the press. It's an issue for the public," said Cox Newspapers' Washington Bureau Chief Andy Alexander, chairman of the American Society of Newspaper Editors' Freedom of Information Committee. "An alarming amount of public information is being kept secret from citizens, and the problem is increasing by the month. Not only do citizens have a right to know, they have a need to know."

Most records can be found in the town clerk's office in each town, although other individual government departments also store data to which the public has access.

Municipalities are required under the state's Freedom of Information law, to make town records available, but the law does not require access be available over the Internet.

Each town in Eastern Connecticut has a Web site offering information to the public, but the amount of information and its ease of access varies greatly.

"The law doesn't require a municipality to even have a Web page," said Mary Schwind, director of law of the state's Freedom of Information Commission.

Killingly, for example has information about government departments and agencies on its Web site, as well as current events, school calendars and a municipal meetings list.

"I like the fact the information is readily available and you can get it without having to leave your home," said Mike Bradley of Ballouville Road, who said he checks the site occasionally for town and school activities.

Other town Web sites offer far less, however.

Access Bozrah's Web page and there's is a message that reads: "This is the official home page for the Town of Bozrah, CT. All others are not endorsed by the town and cannot be presumed to have official and reliable information. Bozrah is proud to participate in this CT Department of Information Technology/Connecticut Conference of Municipalities statewide effort to provide municipal information via the Internet. Every effort is made to include accurate and up-to-date information in good faith; however, the Town of Bozrah takes no legal responsibility for the information provided or found as a consequence of this service nor for any loss or damage resulting from this information."

But there is no information -- not even the Town Hall phone number.

"It's an issue of time and money," First Selectman Keith Robbins said. "When you've got a population of 2,400 and your staff consists of a right hand and a left hand, you don't have the money or the staff to do it. I'm not a big fan of sites that don't get updated, and maintaining it is where the cost comes in."

Brooklyn's municipal Web page provides a bit more as far as who to contact within the town, but a quick review showed some information was outdated.

Clicking on the link to the town's Planning Office, for example, shows the most updated information for "Ongoing and Recently Completed Projects" is dated May 20, 2005. Outdated information can lead a visitor to question the accuracy of other information on the site.

Ironically, even the state's Freedom of Information Commission Web page appears outdated. A listing of commission members shows the term for each commissioner listed has expired, suggesting it hasn't been updated recently.

"I can see where someone might get that impression," said Commission Counsel Gregory Daniels, the commission's webmaster. "But the truth is, they continue to serve until

they're replaced, and none of them have been replaced. But I think we can correct that easily by including an asterisk and saying that."

Brooklyn's Web page also contains a link connecting visitors to PublicRecordCenter.com, an independent Web page that bills itself as "the most updated and largest free public record portal on the Internet." At first blush, it appears to be a wealth of public information, offering data on bankruptcies, divorces, licenses and even "fictitious business name filings" available by county and town-by-town. Problem is, not everything offered is free. There's a fee to access a majority of the records.

Although not required by law, the General Assembly is considering ways in which public records may be accessible through the Internet. A proposed bill establishing an advisory committee to examine the idea and make recommendations no later than Nov. 1, 2007, is expected to pass this year.

"The challenge is going to be to open up the opportunity for access, but without putting the burden of paying for that on the local communities," said state Rep. Michael Alberts, R-Woodstock. "The goal of the bill is to find ways to make information more readily available and this advisory committee is one step closer to opening up town records."

One change to the proposed bill, Alberts said, is the addition of two town clerks to the committee.

"There were no town clerks included in the original bill," he said, "and there is a feeling they should be, since they are the folks most familiar with what would be required."

"I can see where it could be costly for some towns, especially the smaller ones," said Bill Nash of Norwich. "I think you need to ask yourself how much is the demand. I think bigger communities should offer it over the Internet, but I'm not sure every community should be required to."

Among Eastern Connecticut communities, Colchester appears the most advanced in what it offers through its Web page. The town invested \$5,000 to \$6,000 five years ago to set up its page, and then trained department staff on updating the information. Those updates are now a part of their job description.

"It's not perfect, but they do a really great job," First Selectwoman Jenny Contois said.

Colchester's annual cost to maintain the site today is \$300.

Using the Web page e-mail system, Colchester officials can alert residents of coming events, as well as survey residents on critical issues, such as the approaching review of the town charter.

"People are busy and they don't have time to come to meetings," Contois said. "But they want to know what's going on. Our first Web page wasn't so good and people complained about it. So we responded. And this has helped us immensely."

<http://www.norwichbulletin.com/apps/pbcs.dll/article?AID=/20060312/NEWS01/603120310/1002>

Connecticut provides oversight, enforcement of information law

By JULIE A. VARUGHESE
Norwich Bulletin

For Leo Bordeleau of Griswold, the importance of the Freedom of Information Act is undeniable.

Bordeleau, like other residents in town, is upset by the recent discovery a \$2.1 million insurance policy lapsed on the old Town Hall on School Street and there was no money to clear the debris after the vacant building was destroyed by arson Jan. 3.

So, he wants to conduct his own investigation and use the FOIA to retrieve documents relating to the insurance lapse.

"It's an absolute right for (town officials) to come forward with any information," Bordeleau, 45, said. "Anything held back is criminally liable."

Connecticut's FOIA provides its citizens with the right to access documents relating to public meetings and other public records, but how does it compare to FOIA laws in other states?

According to a 2002 study by the Better Government Association, Connecticut was given a C grading and ranks only 17th in the country for best FOI laws.

A 2005 study by the Citizen Access Project at the University of Florida didn't list Connecticut in the top of any category including the ability to copy records, being requester-friendly or timeliness of filling requests.

On a scale of one to seven, with seven the highest, Connecticut's highest score was a six in three areas. The state received 10 scores of two, meaning those areas were almost impossible to retrieve records or see information.

The study found North Carolina, Florida, Missouri and Indiana had the best access to records and documents.

The project's Web site, www.citizenaccess.org, has complete scores for all states.

According to Mary Schwind, director of the law department of the state's Freedom of Information Commission in Hartford, citizens can bring complaints about a municipality

failing to provide access to public records or public meetings to the commission, and it has the power to enforce the law and require a town or the state to hand over documents.

It also has the power to null or void action taken in meetings that were held without appropriate notification to the public or when a meeting improperly goes into executive session, she said.

Connecticut, she said, is the only state that has an enforcement body, like the commission, that has the power to enforce the law.

"Most states have a law, but don't have that type of body overseeing it. They either have an agency that could basically give advice or nothing. And an individual who is denied access to documents has to go to court to get them," Schwind said.

In New York state, an advisory board called the Committee on Open Government can offer advice and educate citizens, members of the press and government officials. But it cannot enforce any laws, said Executive Director Robert Freeman.

He said most of the time opinion papers the committee publishes are good enough to encourage violating parties to comply with the law, and avoid court.

Freeman said there are only eight or nine other states that provide oversight. But he said too many agencies have failed throughout the years because of political influence.

"(Commissions in Connecticut and New York State) have been able to maintain our credibility and reputations for being impartial and apolitical," he said. "We take many more calls from plain old people than from the news media. But there's nobody to call in other states."

Massachusetts

<http://www.legaline.com/2006/03/more-of-sunshine-week-coverage-in-mass.html>

Legal Line: More of Sunshine Week coverage in Mass.

- The Republican: [The hard fight for freedom of information](#)
- Metrowest Daily News: [Open Meeting Law changes eyed](#)
- Boston Herald: [State public records chief vents 'frustration' with AG](#)
- Berkshire Eagle: [Records keeper opens up](#)
- Metrowest Daily News: [Public records czar wants more power](#)
- The Republican: [Police finalist list kept secret](#)
- The Recorder: [Newspapers want to put teeth into Massachusetts' open meeting law](#)

- Standard-Times: [Our View: Sunshine Needed in Marion](#)
- Cape Cod Times: [Open Documents Force Government to Come Clean](#)
- Cape Cod Times: [Bill would fine individuals for violating open meeting law](#)
- Cape Cod Times: [Government Slows Actions on Public Records Requests](#)
- Lowell Sun: [Creeping Secrecy](#)
- Eagle-Tribune: [Everyone has a stake in fight for open meetings and records](#)
- Eagle-Tribune (corrected link): [Democracy works best when the sun shines on machinery of government](#)

Springfield Republican

<http://www.masslive.com/living/republican/index.ssf?/base/living-0/1142412710134690.xml&coll=1>

Citizens demand open records

Wednesday, March 15, 2006

By MARY ELLEN LOWNEY
mlooney@repub.com

Editor's note: This is the fourth of a six-part series held in conjunction with Sunshine Week, a national observance focusing on the role of freedom of information in a democratic society.

Agawam parent Thomas H. Tierney considered it a clear case of public access to data that legally belonged in the public domain.

But that's not the way the state Department of Education saw the matter seven years ago, and Tierney had to take his case to the office of the Secretary of State's Public Records Division to gain quick access to Massachusetts Comprehensive Assessment System test scores.

While most freedom of information battles are waged by newspapers, a small army of ordinary citizens also has confronted the government when it attempts to keep secret important public matters.

Amherst business owner Larry J. Kelley, for one, has over the years challenged about a dozen cases of privately run public meetings, or refusal to provide public documents. He believes openness is the hallmark of a democratic society.

"It keeps everybody honest to have access to public documents and meetings," Kelley said.

In Tierney's case, victory was short-lived.

He wanted to see - wanted citizens of the state to see - results of the 1999 scores on the same day as local school districts get them.

Tierney considered it unfair, even illegal, that the state DOE embargoed the information until local school officials could sift through it and, in some cases, appeal to the state for adjustments.

"I fought for an openness of the test data. I believe that as a society, more information should be available and in quicker fashion," said Tierney, a middle school technology teacher and the father of three daughters.

Tierney won his case before the state supervisor of public records, a division of the Secretary of State's office. The Republican and its predecessor, the Union-News, also joined his battle.

The supervisor upheld the state law that calls for release of public records "without unreasonable delay," and within 10 days of a request.

"My thing was, look, it's taxpayer money. If the school districts can comment on it, parents should be able to comment. It's as clear as that," he said.

He got his data in late November, when state education officials made their public release. Tierney wanted the information before the early November elections, as a way to hold school board members accountable for their work in districts.

"I wanted the scores to have an impact on people's choices, to be a test of whether the school board members were living up to their promises," Tierney said.

But even at that, Tierney's victory was short-lived.

In late 2000, a Suffolk Superior Court judge denied public access to MCAS scores on the day districts get them. That ruling stemmed from a court challenge brought by The Boston Globe and the Union-News, since renamed The Republican.

Tierney still believes he was right and the state wrong to embargo the information so that districts can review it before it goes public.

He also believes the state public records law needs to be strengthened and hopes for enactment of pending legislation filed by the Massachusetts Newspaper Publishers Association that would provide for fines and penalties for violations of the so-called sunshine laws.

"The law is good and necessary, but it has no teeth," said Tierney, who has no regrets about the battle he waged.

Challenges to the public records law go to the secretary of state's office, but favorable rulings don't necessarily win positive outcomes as the law carries no fines or punishments. In fact, enforcement can only be made by the state Attorney General's office, which Tierney said can prove difficult.

"The system doesn't work. In the end, it's often a case of one state agency fighting another state agency. It's nothing if the attorney general doesn't want to go forward," he said.

Tierney said a society can only benefit with public access to information.

"The law is a wonderful tool to help find information from government sources. In order to make agencies give information in a timely manner, the public records division should be given the power of enforcement," Tierney said.

Metro West Daily Boston, <http://www.metrowestdailynews.com/localRegional/view.bg?articleid=124414> **Public records czar wants more power**

By **Emelie Rutherford**/ Daily News Staff

BOSTON -- How do you shed more sunshine on public records squirreled away in government offices, not readily accessible to everyday citizens who have the legal right to see them?

It takes more money and some changes to state law, says the state's public records czar.

Under the Massachusetts Public Records Law people can see and make copies of most documents generated by government entities other than the Legislature and courts.

Several types of records are exempt and not considered public documents, including personnel records, materials tied to ongoing investigations, trade secrets and some of the governor's documents.

Still, a vast array of materials are public, from police arrest logs to assessed value of homes to the salaries of Mass. Turnpike toll collectors. Holders of public records must turn them over to the public within 10 days of requests. Yet when citizens do not receive the documents they want and believe the holders of the documents are breaking the Public Records Law, they can turn to Alan Cote.

As the state's supervisor of public records, Cote determines if public document custodians are improperly withholding the material or if they are asking for too much money to pull together the data. Custodians can charge the public for the cost of copying and searching for and segregating the requested material.

Yet Cote cannot take action against officials who violate the Public Records Law, and refers violations to Attorney General Thomas Reilly's office.

Reilly's office issues orders for documents to be turned over, but not fines or punishments, his spokeswoman, Meredith Baumann, said.

Cote, though, said Reilly's office "is not actively pursuing" all the cases he sends it, and in some cases has reversed decisions of his. And Cote said that can weaken his authority and create confusion.

"People look to us as the enforcer and it causes a lot of frustration for everybody," Cote said.

Secretary of State William Galvin, Cote's boss, has backed legislation several times to give his office more authority to enforce the Public Records Law. Yet Cote said such bills always have died in the Legislature. A bill before the joint State Administration and Regulatory Oversight Committee now appears to be heading for the same fate.

"At this time I'm not quite comfortable by having that office have that particular power," said state Rep. Antonio Cabral, D-New Bedford, House chairman of the committee.

Cote would like to see Reilly's office put more resources into enforcement of the Public Records Law. Now one attorney in Reilly's office -- for whom Cote had nothing but praise -- handles public records matters.

Cote also wants more money for his office to hire attorneys and for training staff to teach public records custodians across the state about the law.

"There's never enough funding put into this, and there's never enough staffing put into this," Cote said. "The problem is that no one cares about public records, it seems, until there's a crisis."

Reilly spokeswoman Baumann said any criticism of her office's handling of public records violations is "really without merit."

Since 1999, Reilly's office took actions that resulted in the disclosure of public records in 97 of 123 public record disputes -- or just shy of 80 percent -- referred to it from the secretary of state's office, Baumann said. The actions included orders to disclose public records and mediation by Reilly's office. None of the violations went to court or resulted in fines, she said.

"We've got a really stellar record when it comes to enforcing the Public Records Law," Baumann said.

Approximately 26 referrals did not result in disclosure orders from Reilly's office for reasons including withdrawn complaints, plaintiffs leaving their jobs and Reilly's office's determining the requested records were exempt from the Public Records Law, Baumann said.

Cote believes it is not Reilly's office's job to review the violations he refers it to determine if the Public Records Law was violated or not.

For more about the state Public Records Law:
<http://www.sec.state.ma.us/pre/prepdf/pubreclaw.pdf>

Editor's note: This is one in a series of stories for Sunshine Week, a national media project to inform readers about public records, public access and the public's right to know.

Open Meeting Law changes eyed

By **Emelie Rutherford**/ Daily News Staff

BOSTON -- Some reforms backed by newspaper advocates intended to thwart local and state boards from going behind closed doors to decide public matters may get a boost from lawmakers.

The co-chairman of a legislative committee is pushing a bill to overhaul the state Open Meeting Law for the first time in three decades. The law was designed to make sure most meetings of governmental boards and committees are open to the public, with just a few specific exemptions.

Wide-reaching legislation that may emerge from the committee this week would form a new body to juggle Open Meeting Law complaints, ban boards from discussing some matters in private and create new fines for violations, said state Rep. Antonio Cabral.

"We felt if we're going to tackle this issue we should do an omnibus bill to reform the Open Meeting Law because it really hasn't been updated since 1975," said Cabral, D-New Bedford, House chairman of the joint State Administration and Regulatory Oversight Committee.

Yet Cabral said he is not ready to go as far as the Massachusetts Newspaper Publishers Association wants.

Cabral supports reforms backed by the association to create civil penalties for individual members of state and local boards who break the Open Meeting Law. But he does not support creating criminal offenses for board members who knowingly violate the law, as the publishers have requested.

Robert Ambrogi, the association's executive director, said he can live with not getting the criminal penalties.

"Our position has been that even a civil penalty is better than nothing," Ambrogi said. "Really our goal is to create a disincentive for officials to violate this law. We want them to think twice about going into a closed meeting."

Under the Open Meeting Law, if a majority of a municipal or state board meets, it must do so in public except under specific exemptions allowing it to meet in private, such as discussing strategy about collective bargaining and ongoing litigation. Sufficient notice must be given, and notes must be kept.

Open Meeting Law violations of state boards are enforced by the attorney general and of local boards are handled by district attorneys.

Cabral said the bill he is asking his committee to advance would:

- Create a new board to serve as a clearinghouse of all Open Meeting Law complaints across the state. The Open Meeting Law Board would be within a new Office of Public Accountability within the attorney general's office. The seven-member board would refer complaints it determines are legitimate to the attorney general or district attorneys, who would report back to the board with their actions.
- Update the definitions of "meetings" and "deliberations" to account for new technologies boards use to communicate.
- Require boards include their meeting agendas with the notices they already are required to post in advance of meetings.
- Require deliberations some boards now conduct in private, such as interviewing candidates for school superintendent positions, be done in public meetings.
- Create new civil penalties, as the publishers' association requested.

Current state law calls for fining municipal boards, but not individual members, that violate the Open Meeting Law. And the law now does not call for any fines against state boards or their members for violations.

Thus, Cabral said the bill he is eyeing would create civil fines for state boards and attending members of state and municipal boards for meetings held in violation.

Cabral said the new bill is based on reforms the committee came up with and that were suggested by lawmakers and the association. After being released from committee the bill would need approval of the House, Senate and Gov. Mitt Romney to become law.

Some local lawmakers on Cabral's committee are not thrilled about adding new penalties to the Open Meeting Law.

Fellow committee member state Sen. Susan Fargo, D-Lincoln, a former selectman and weekly newspaper editor, said while she is "in general in favor of sunlight on proceedings," fines on board members would be "onerous" and discourage people from running for local office.

State Rep. Marie, D-Milford, a former selectman, said municipal board members who devote their time to their communities should not be penalized with fines.

"Most of these (board members) are volunteers and I think exposure to violating the law is enough for a public official," Parente said. "Voters can make the decision" to punish violators by not re-electing them, she said.

State Sen. Dianne Wilkerson, D-Boston, Senate chairwoman of the committee, last week was still weighing the sundry Open Meeting Law bills the committee has considered this session, according to her legislative director, Ryan McCollum.

Reporters seek shield law: Senate president supports new law to protect sources

By Emelie Rutherford/ Daily News Staff

BOSTON -- Recent history shows that courts and reporters with juicy information from confidential sources don't always mix.

Rhode Island television reporter Jim Taricani served four months of home confinement starting in 2004 for protecting the source of a video showing a public official taking a bribe. Former New York Times reporter

Judith Miller spent 85 days in jail last year for refusing to reveal who disclosed CIA agent Valerie Plame's name.

Some Massachusetts journalists fear it's only a matter of time before reporters here join Taricani and Miller's ranks.

So, in an unnatural union, journalists and state Senate President Robert Travaglini have teamed up to create a shield law in Massachusetts that would protect reporters from having to reveal their confidential sources or notes to state officials except when public safety is on the line.

Travaglini filed a bill creating a shield law late last year after meeting with proponents including Charles Kravetz, vice president of news and station manager at New England Cable News. Kravetz heads up a coalition of newspaper, television, radio and wire service journalists working to pass a shield law in Massachusetts, one of 19 states without such a law protecting reporters.

"The Miller case was in the headlines and there was a lot of debate upon the chilling effect that that case had on newsgathering abilities," said Travaglini spokeswoman Ann Dufresne, a former reporter herself.

Travaglini "believed after the meeting that the issue had merit and wanted to at least get the conversation going on the Hill," she said.

The First Amendment guarantee of free speech and freedom of the press is not enough protection for reporters, said Robert Ambrogi, executive director of the Massachusetts Newspaper Publishers Association, which includes The Daily News and its parent, Community Newspaper Co.

"The courts have not at all been clear about the fact that the First Amendment creates any kind of reporters' shield," Ambrogi said. If the Legislature passes the statutory protections for reporters, he said, "it sends a message to the courts that the Legislature considers this to be a priority and an important matter."

Under Travaglini's bill, reporters would have to reveal their sources when needed to prevent "imminent and actual harm to public security from acts of terrorism."

They would have to turn over their notes when the information in them is vital for resolving a "significant legal issue" with "an overriding public interest."

The proposed shield law's fate on Beacon Hill is uncertain.

House Speaker Salvatore DiMasi hasn't decided if he'll back the bill and the two chairmen of the joint Judiciary Committee aren't ready to comment, their spokesmen said. Gov. Mitt Romney also is reserving judgment before a bill lands on his desk.

The deadline for acting on bills in this legislative session is nearing, and the shield law bill on Friday still had not been sent from the House Rules Committee to the Judiciary Committee.

Kravetz, though, is hopeful.

"We've got a lot of senators and representatives who have expressed good will about this," he said. And though DiMasi's intentions are unclear, Kravetz said he had a "very positive" meeting with the speaker's legal counsel this month.

Yet the proposed shield law undoubtedly will face opposition from the legal world. Prosecutors generally oppose shield laws because they can make it harder to get evidence reporters alone possess.

David Frank, a reporter at Massachusetts Lawyers Weekly and a former assistant district attorney in Suffolk County, said while he generally supports the intent of a shield law he understands concerns prosecutors have with one.

"There certainly could be circumstances where an aggressive reporter has information that would assist either the prosecution or defense with a case and unless the reporter made the decision or was required to disclose the identity of the source, there's no way the police or the defense or the prosecution would be able to find that person," Frank said.

Even if a shield law is enacted in Massachusetts, Frank said judges still would have some discretion over how to interpret it when considering what to do when reporters have needed evidence.

"The judge has the obligation to ensure the defendant on trial has a fair trial," Frank said.

Attorney General Thomas Reilly supports the proposed shield law and believes reporters' work "is vitally important to informing the public," his spokeswoman Meredith Baumann said.

"As attorney general he obviously sees the need for law enforcement to be able to do their job as well, particularly in the case of terrorist acts, so he supports efforts to make allowances for prosecutors in those cases," she said.

State Rep. James Vallee, D-Franklin, a former prosecutor, also backs the proposed shield law.

"It's part of our free and open society, getting information to people, Watergate being a perfect example," Vallee said. "I think it's an integral part of getting information to the public."

State Sen. Karen Spilka, D-Ashland, said the exemptions Travaglini's bill carry would ensure reporters do not run amok.

"To me the exemptions strike a balance between providing for public safety issues and for the more extreme issues, and yet providing for the keeping of the information and shielding the informant," Spilka said.

Thirty-one other states and Washington, D.C., have state shield laws, and Congress is considering a federal shield law now.

The last serious push to create a shield law in Massachusetts was in 1985, when a Press Shield Law Task Force commissioned by Gov. Michael Dukakis tried to establish a reporter's privilege. The state Supreme Judicial Court shot down that effort.

(Editor's note: This is the first in a series of stories for Sunshine Week, a national media project to inform readers about public records, access to information and the public's right to know.)

(Emelie Rutherford can be reached at 617-722-2495 or erutherford@cnc.com.)

Berkshire Eagle, Pittsfield

http://www.berkshireeagle.com/headlines/ci_3600130

Records keeper opens up

The Eagle recently interviewed Alan Cote, state supervisor of records, to learn about his role as keeper and revealer of public information.



Q: What does your job entail?

A: As the supervisor of records, I oversee a staff of attorneys who are responsible for making written determinations on whether a specific record or portions thereof are public.

Q: What type of public records are under your jurisdiction?

A: I oversee the creation, maintenance and preservation of all the records of the commonwealth, except the Legislature and the Judiciary.

Q: What records are public?

A: There is a standing presumption that all records, regardless of types, size and medium, made or received by an employee or agent of the government, are public in nature and should be available for inspection upon request.

Q: How many records requests do you get on an average day?

A: We do not receive the actual requests for records. Those come from the requester and are made directly to the custodian of the record (the person who is charged with maintaining the record).

Q: How long does it take once a record is requested?

A: The custodian has 10 calendar days in which to respond to the requester either by producing a copy of the requested record or by providing a written, good faith estimate for the cost of producing the record.

Q: Does it cost anything to obtain a public record?

A: Fees for access to public records are established by regulation. The regulations may be found on our Web site www.sec.state.ma.us/pre/preidx.htm and in our Guide to Public Records, which is available online, or by mail by calling our office at (617) 727-2832.

Q: Investigating complaints regarding the quality of executive session meeting minutes from local government boards is part of your job. How many complaints do you receive?

A: By far the largest complaint deals with the review and release of executive session minutes. We tell each custodian that all minutes of open meetings are a public record and must be made available immediately following the close of the meeting.

http://www.berkshireeagle.com/headlines/ci_3603549

Records law gives access

By Jenn Smith, Berkshire Eagle Staff

Every citizen has the right to know. But not everyone knows how to define or exercise that right.

For you, the citizens of Berkshire County, there are three principal laws which allow you to access public information: the Massachusetts Public Records Law, the Federal Freedom of Information Act and the Privacy Act.



These laws allow you to look up information about local, state and federal government and your personal information kept on government files, respectively.

When it comes to accessing local public records, the standard protocol seems to be: "Ask, and you shall receive."

"If you live in a community, it can become relatively easy to ask for records there," said Deborah Ferro Burke, a resident of Lenox. "You can get to know the town clerk, who knows where all the town records are, and they can be helpful."

Ferro Burke was among a group of private citizens who heavily researched the feasibility for a hotel proposal in Lenox by accessing public records like the application, the town's bylaws, and minutes from board meetings and public hearings.

The state has had a law mandating the disclosure of public records since 1851, according to a statement written by Secretary of the Commonwealth William Francis Galvin. This law was

revised when Congress passed the FOIA in 1973, in order to make federal government records more accessible to the general public.

"Every government record is now presumed to be public unless it is subject to an exemption," said Galvin.

For most local public records, one can usually make a request orally, though it is suggested that a request be made in writing for clarity's sake. No identification is needed.

A clerk or custodian of an agency's records then has 10 days to respond to a request.

"Which we usually do right on the spot," said Dalton Town Clerk Barbara Suriner.

At the time of the request, the clerk also lawfully maintains the right to charge a "reasonable fee" for the request or a certified copy. A copy of an original death certificate certified with a town seal usually costs \$10.

A written explanation must be provided to the requester for any information exceeding a charge of \$10.

Suriner said the only reason that she wouldn't be able to provide records right away is when there is multiple documents involved or if the information is not available or restricted.

For example, the Lenox Town Hall only has vital records for people dated back to 1776. Any information prior to that date would not be available.

Examples of restricted information may include home phone numbers or maps and blueprints which could threaten public safety if released.

If a record is restricted or does not exist, a written explanation must be issued to the requester within 10 days of the initial request under the Public Record Law.

Details of this law can be found within the Massachusetts General Laws, Chapter 4, Section 7, Clause 26; and Chapter 66, sections 10 to 18.

The FOIA laws, also known as "sunshine" laws, may require a little more effort to request public records, but are nevertheless accessible.

You may first try to make an informal oral request directly to the agency you are seeking information from. But it is more than likely that the agency will require a formal letter of request.

This should be done when requesting information from federal agencies such as the Federal Bureau of Investigation, Department of Defense, Environmental Protection Agency or National Aeronautics and Space Administration.

Many of these agencies will accept a request by hand delivery, mail or fax. Others provide fill-in-the-blank-style request forms which can be submitted electronically through their Web site.

As with local public records, there are some exemptions that prohibit public access. Some of the exempt categories include national security, internal agency rules, information specifically exempted by other federal laws already on the books, internal agency memoranda, certain law enforcement records and bank reports, and data on oil and gas wells.

The third law, which allows you to find out what information the government is holding on you, is known as the Privacy Act. It gives you the right to see government records about yourself and to correct information that is proven erroneous.

Like the FOIA, the Privacy Act request must be made in a written formal letter addressed to the agency you believe may have records about you.

Unlike the FOIA, the Privacy Act does not permit agencies to charge anyone request fees beyond duplication costs. There is also no specific timeline by which an agency must process your request under the Privacy Act.

What agencies will require under the Privacy Act is detailed proof of your identification, which may include your residence, social security number, nicknames and foreign travel history.

"If you actually believe you have a government for and by the people, these records are yours. You have every right to understand them and how they're developed," said Ferro Burke. "That to me is one of the core tenets of democracy."

» **Setting the record straight**

Open records:

Birth, death and marriage records; tax records; maps; public officials' salaries; actions taken in the Legislature; public meeting and resolved executive session minutes; professional licensing registries; restaurant inspection reports.

Closed records:

Home telephone numbers (aside from phonebook); information such as blueprints that could threaten public security; personal information of individuals under the age of 17; meeting minutes taken during executive session where issues have not been resolved.

» **Help with records**

Places to find examples of Freedom of Information request letters:

- The Committee on Government Reform's "Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records" includes a sample FOIA request letter, which can be accessed through The Freedom Forum's First Amendment Center Web site, www.firstamendmentcenter.org.
- The Reporters Committee for Freedom of the Press has an online Freedom of Information Act form letter. You fill in the blanks, print it out and mail it, or e-mail it to the agency. Access it at www.rcfp.org/foi_letter/generate.php.

A Guide to the Massachusetts Public Records Law can be found at:

www.sec.state.ma.us/pre/prepdf/guide.pdf.

http://www.berkshireagle.com/headlines/ci_3596619

Not just media demand info

Everyday citizens lead charge for openness in government

By Derek Gentile, Berkshire Eagle Staff

You — the private citizens of America — comprise the largest group of users of the federal Freedom of Information Act — the formal request for public records and information.



This is according to a study by the Coalition of Journalists for Open Government, released in August 2005.

After private citizens, lawyers make up the largest group that use the Freedom of Information Act, a federal statute that allows any person to obtain federal records — unless those records or parts of them are protected from disclosure by certain legal exemptions.

Where do journalists rank in filing for information? By the numbers, they're only "minor players" on the national level, according to the Coalition of Journalists.

Here in Berkshire County, local municipalities do not get many Freedom of Information Act, or FOIA, requests.

Mark Webber, the administrative assistant in both the towns of Cheshire and West Stockbridge, said he sees such a request once "every two or three years, at best."

Typically, said Webber, the request comes from a lawyer seeking municipal, real estate or assessment information.

"These requests involve us because we are the keepers of town records, not necessarily because there has been any malfeasance on the part of the town," said Webber.

Alfred Skrocki, the superintendent of the Adams-Cheshire Regional School District, estimated that he has seen one FOIA request in the past five years, from a party who was interested in teachers' salaries.

"We rarely see any," he said.

Frederick Lantz, the spokesman for the Berkshire County District Attorney's Office, said his office received one such request from a Boston-area newspaper requesting crime statistics.

More likely, say town and state officials, such a request for information will come on an informal level. Skrocki noted, for example, that he sometimes gets requests from reporters for minutes of School Committee meetings to help in the creation of a story.

Lawyers seeking insurance or other company-based information sometimes have to rely on FOIA requests, according to attorney Thomas Campoli, senior partner at Campoli and Campoli in Pittsfield.

"It will happen when you're dealing with a government agency like (the Occupational Safety and Health Administration)," said Campoli. "We'll file a request to gain access

to information gathered as part of an investigation. If we think it's information that will be helpful on behalf of a client, we'll go after it."

Stockbridge Police Chief Richard B. Wilcox recalled a team of lawyers and insurance investigators in his office several years ago. They made a formal request for records of his department's investigations of violent crimes in Stockbridge over a period of years.

At one point, said Wilcox, he had to redact, or "black out" certain portions of some of the documents to preserve an open investigation.

But while local government sees relatively few FOIA requests, it is a much different story at the federal level.

According to FOIA Post, a newsletter published by the federal government, FOIA requests topped four million in 2004, an all-time high.

This was an increase of 23 percent from 2003. Of the 2,460 legal suits reported in 2004 that involved FOIA requests, only 18 of them came from media outlets.

This was an increase of 23 percent from 2003. Of the 2,460 legal suits reported in 2004 that involved FOIA requests, only 18 of them came from media outlets.

The departments that processed the most requests were, in order, the Social Security Administration, the Department of Veterans Affairs and the Department of Health and Human Services.

Almost all of the 1.84 million requests to the Social Security Administration were from individuals seeking their own Social Security records, the FOIA Post reported.

The Department of Veterans Affairs reported it received 1.82 million FOIA requests, again almost entirely from veterans or their families seeking information.

The Department of Health and Human Services was a distant third, with 142,000 requests.

A federal audit in 2002 of FOIA revealed that FOIA-related activities for all federal agencies cost more than \$300 million. Of that figure, about \$18 million was spent in litigation.

The Coalition of Journalists report noted that individuals requesting personal information are most likely to get that information. Government response times of 10 to 12 days was the average.

Waltham Daily News Tribune

<http://www.dailynewstribune.com/localRegional/view.bg?articleid=71505>

Officials have open door when it comes to public records

By Galen Moore / Daily News Staff

Wednesday, March 15, 2006 - Updated: 05:04 AM EST

WALTHAM -- The state's Open Meeting Law says everyone has a right to be present at almost every public meeting. The Public Records Law gives everyone the right to inspect almost any public document.

Most people don't have to take these two laws literally, but journalists do. Without the public meeting and record laws, even the routine budget balancing and tax-rate setting of city government could remain secret.

In recent memory, the Daily News Tribune has not had a fight to obtain public records from city officials, but such fights are not uncommon for journalists.

Over six months in 2003 and 2004, a Daily News Tribune sister paper, the MetroWest Daily News, appealed to the Middlesex district attorney's office to obtain records from the Holliston School Committee concerning a severance package for a departing school superintendent.

Waltham City Clerk Rosario C. Malone said it is unlikely anything similar could happen in Waltham.

"The bottom line is, if you need information, it's readily and immediately available," Malone said. "We welcome the media."

Since Malone started as city clerk in 2001, the Daily News Tribune has not had to test his open-door policy. Any documents requested by the paper have been made available to reporters.

In the Holliston case, however, the district attorney ruled School Committee clerks had not taken adequate notes covering closed-door executive sessions. Public officials are allowed to meet behind closed doors to discuss personnel matters, real estate transactions and lawsuits, but a record must be kept of the discussions.

According to the District Attorney's Open Meeting Law Guidelines, "each discussion held at the meeting must be identified; in most cases this is accomplished by setting forth a summary of each discussion."

Malone said in Waltham, committee clerks do keep a record of what is discussed in executive session, and it is available upon request, once that executive session matter has been resolved. "I'd call them notes before I'd call them minutes," Malone said yesterday.

The notes satisfy the law, and keep the clerk informed going into subsequent meetings, he said.

The level of detail in the notes of executive sessions may vary, according to who is taking them, he said.

Malone's office last year was criticized by opponents of the Community Preservation Act, who claimed the clerk was not forthcoming with election records, after the city approved the measure by a four-vote margin in a recount.

After the recount, CPA opponents asked to look at copies of voter lists that track who came to the polls to vote, saying a preliminary count did not match the number of ballots cast.

Malone said those records were available the day of the recount, and accommodating the petitioners' requests again was difficult. The documents were made available again, but not until the day before a deadline for filing suit challenging the results.

By that time, the petitioners had already filed the suit. The suit was later dismissed by a district court judge.

Quincy Patriot Ledger

<http://ledger.southofboston.com/articles/2006/03/11/news/news03.txt>

Sh-sh-sh: Towns keeping secrets from you: Despite the laws, many municipalities still try to operate under public's radar

*By JACK ENCARNACAO
The Patriot Ledger*

When a group of Cohasset officials met in March of last year to discuss buying a 19-acre estate without notifying the public, they were not just being discreet. They were breaking the law.

The Norfolk County District Attorney's office found the session to be in violation of the state's Open Meeting Law, which is designed to curb the secrecy surrounding the deliberations of public officials.

Thirty years after such open-government laws - collectively called sunshine laws - were strengthened in Massachusetts, instances remain in South Shore communities where important decisions are made behind closed doors, custodians are reluctant to release public documents and boards hold meetings without giving proper notice to the public.

Sunday marks the beginning of Sunshine Week, a national effort to shine light on the public's right to government information.

Locally, government groups often balk at requests for public documents, say monitoring groups, and public boards turn more frequently than ever to executive sessions, where they can exclude the public and press, to make important decisions.

Vigilance about challenging such actions are as strong as ever, said Alan Cote, the state's supervisor of public records.

"We're getting more genuine appeals than we ever have," he said. "It's always a local-issue thing. People want to know what's going on in the community and how their money is being spent."

Cote said his office has stopped pursuing what it considers minor requests for public records, such as a company that makes class rings and wants school seniors' addresses. This gives the office more time to work on complaints from private citizens who want to know what their public leaders are doing.

"The frivolous ones seem to have fallen away," he said.

Another tool citizens use to enhance government transparency is reporting open meeting violations to their local district attorney's office.

The law requires all boards and committees to conduct business in public. There are some exceptions, including negotiating labor contracts, discussing an employee's health or reputation and other narrowly defined reasons.

Norfolk County District Attorney William Keating's office has investigated 97 allegations of Open Meeting Law violations in the past five years, and last year found five such violations. Plymouth County District Attorney Timothy Cruz's office investigated 106 in the past five years and found 24 violations.

"There are a lot more calls than there are investigations," said Bridget Norton Middleton, a spokeswoman for Cruz. "There are a certain percentage in the towns who are very involved and care a lot. You get a lot of repeat phone calls."

One of those groups has long been Hanson Government Watchers. Betty Dahlberg, the group's president, said public officials seem more interested in exemptions to the Open Meeting Law than the spirit of the law itself.

"It seems like these days not much of importance is done in open sessions," she said. "They just seem to find excuses to go behind closed doors more than they ever did in the past."

Dahlberg cited a situation last April, when Hanson selectmen were criticized for hiring Executive Secretary Michael Finglas during an executive session.

A similar situation in Carver last month sparked the ire of resident Paul Johnson. Selectmen extended the contract of Town Administrator Richard LaFond well in advance of its expiration behind closed doors.

"We need more than Sunshine Week, we need Sunshine Year," Johnson said. "The Open Meeting Law and the public records law . . . there's no teeth to it at all. (Officials) violate the law with impunity, and when they get caught they know they're going to get their wrist slapped and walk. That's the problem."

Victor DeSantis, a former political science professor at Bridgewater State College, said vigilant citizens are key to maintaining open local government.

"Vigilance is cyclical," he said. "You might have a government watchdog group up in one community and then the community next door has one. These things sort of come and go. In the lull periods, you wonder to what extent there is some sense of complacency."

Though it rarely happens, officials who violate the Open Meeting Law may can be fined up to \$1,000.

Massachusetts adopted its first Open Meeting Law in 1958 and has had laws mandating the disclosure of public records as far back as 1851, when the Legislature decreed, "All county, city or town records and files shall be open to public inspection." In the wake of the Watergate scandal, the laws were revamped.

Provisions governing closed meeting sessions were specified, allowing meetings to be held in private only in nine specific situations. Cote said minutes of these sessions, the printed record of what happens at public meetings, are not available quickly enough.

"There needs to be greater concentration and emphasis on minutes," he said. "Minutes of meetings must be available at the conclusion of the meeting and they need to be as complete as possible. Even if they're handwritten."

Jack Encarnacao may be reached at jencarnacao@ledger.com .

Milford Daily News

<http://www.milforddailynews.com/localRegional/view.bg?articleid=88276>

Good-government group launches campaign to ease access to public

By Emelie Rutherford / Daily News Staff
Friday, March 17, 2006

BOSTON -- As Sunshine Week winds down, a government watchdog group unveiled a campaign yesterday to expand access to public records and track when government officials illegally weigh public matters in private and withhold public documents.

A key part of the new Massachusetts Campaign for Open Government, run by Common Cause Massachusetts, is a Web site (www.maopengov.org) that tracks the type of public records city and town governments post on their official Web sites.

According to the campaign's research, only 23 Massachusetts communities -- including Shrewsbury and Concord -- currently post six key government records on their Web sites. Those six types of materials are: governing bodies' meeting agendas, governing bodies' meeting minutes, municipal budget information, general bylaws, Town Meeting warrants and Town Meeting results.

Communities such as Framingham, Waltham and Dedham post just some of the six types of records. Milford is one of the 67 Massachusetts communities that do not post any of the six on their Web sites, according to the campaign's online tally.

"We want people to be involved in their government through these Web sites, and not just by obtaining city services," said Common Cause Executive Director Pam Wilmot. Giving citizens such public records online helps foster democracy on the local level, she said.

The campaign's goal is to triple the number of cities and towns that post all six types of public records on their Web sites by next year.

To do this, Common Cause will ask its 10,000 members and other organizations to put pressure on their local governments, Wilmot said.

"We're planning to do a considerable amount of citizen outreach around this," Wilmot said. "It may be as simple as a phone call to their city clerk or Web master."

The campaign will release a full report on public records in Massachusetts cities and towns in the coming weeks, Wilmot said.

The campaign also is developing a section of its Web site where people can report perceived violations of the state's Open Meeting Law and Public Records Law.

Under the Open Meeting Law, if a quorum of a municipal or state board meets, it must do so in public except under specific exemptions allowing it to meet in private, such as discussing strategy about collective bargaining and ongoing litigation.

The Public Records Law allows people to access most documents generated by local and state government entities other than the Legislature and courts.

Several types of records are exempt and not considered public documents, including personnel records and materials tied to ongoing investigations.

Wilmot said the forthcoming violations section of the campaign's Web site may resemble part of the Maine Freedom of Information Coalition's Web page (www.mfoic.org/violations.html).

The Massachusetts campaign will not act on potential violations posted to the site, Wilmot said. Instead, she said, the campaign will serve people who believe they have been wronged and want to air their grievances, but are not ready to go as far as file complaints against government officials.

"Currently, this information is not being tracked other than if there is a formal complaint filed," Wilmot said.

Rhode Island

The Westerly Sun

<http://www.thewesterlysun.com/shared-content/search/index.php?search=go&o=0&l=25&s=&r=&d1=&d2=&q=money+maker>

THE MONEY MAKERS: MANAGER, CHIEF TOPPED WESTERLY MUNICIPAL EARNERS

BY ELLYN MORAN SANTIAGO - THE SUN STAFF

FIRST OF 5 PARTS

WESTERLY Who made the most money among town and school employees in each of our area communities?

There were no surprises at Westerly Town Hall. The town leader's post generated the greatest pay last year.

Town Manager Joseph T. Turo earned \$100,715 in 2005 for running the day-to-day business of Westerly n not unlike acting as CEO of a corporation with a budget of \$71 million. The second in command, the police chief, comes in at second on the municipal side of the budget. Chief Edward A. Mello made \$89,977 last year for running a 48-member police force.

All of the figures cited in these stories and listings indicate what employees were paid during the 2005 calendar year. While the superintendent of schools post carries the highest salary, the transition of superintendents in 2005 left current Superintendent Thomas DiPaola well down the list. (See related Page 1 story).

After the manager and police chief, it's overtime that dictates the rest in the top 10 list of highest- paid municipal workers, including police officers. Indeed, it's the town's law enforcement officers that take up all the municipal slots.

Detective Mark J. Carrier comes in at No. 3 with a base salary of \$67,230 and \$16,993 in overtime pay. But what may come as a surprise to some is that a patrol officer is fourth on the town's money maker list. With \$27,000 in overtime and police grant wages added to his base salary of \$56,618, Patrolman Robert K. Gilman earned more than \$84,000 in 2005 n though, in the case of Gilman, a portion of that overtime is paid for by a federal grant, not as a direct cost to the town.

What do the town's top money makers do to earn their pay? According to the job description, the town manager answers to the town council and is expected to respond to all its directives. He is also the town's public safety director, oversees the police department and is responsible for civil defense. Turo is responsible for coordination and supervision of all 12 town departments, preparing his budget, and investigating civilian complaints.

In Mello's case, the chief is responsible for running the police department's day-to-day business from planing, organizing, scheduling, directing, coordinating and controlling all staff duties, responsibilities and activities.

The chief is also responsible for all facets of the department's budget n \$3.9 million for the last fiscal year, and he must have extensive skill in dealing with collective bargaining n union negotiations.

SEE RELATED STORIES IN NEWS SECTON ON THE WESTERLY SCHOOL "MONEY MAKERS" AND ON THE RECORDS THAT WENT INTO THIS 5-DAY SERIES

WESTERLY'S MUNICIPAL TOP 10

(Gross reported earnings in calendar 2005)

(Source: Town of Westerly)

1. Town Mgr. Joseph T. Turo n \$100,715
2. Police Chief Edward Mello n \$89,977
3. Det. Mark J. Carrier n \$84,224
4. Patrolman Robert Gilman n \$84,031
5. Det. Michael D. Carreiro n \$83,489
6. Capt. Lauren A. Matarese n \$82,820
7. Det. Edward W. St. Clair n \$82,267
8. Det. Mark Wright n \$78,841
9. Lt. Thomas L. Toscano III n \$78,500
10. Ptlmn. David LaChapelle n \$78,425

A PATROLMAN MAKING \$84,031?

IT'S ALL IN THE OT, CHIEF SAYS

By Ellyn Moran Santiago
The Sun Staff

WESTERLY n How is it possible that a patrol officer can end up being one of Westerly's highest-paid municipal workers?

Police Chief Edward A. Mello explained that the numbers are slightly more complicated than the ones that meet the eye.

As is the case with patrolman Robert Gilman, a portion of his wages is paid through a federal police grant. But it's the overtime n especially in this officer's case n that leaps off the page. Gilman pulled down more than \$27,000 in overtime. But those numbers too, need some explanation, Mello said.

Overtime, which is earned at time and a half, Mello said, is called for on any number of occasions. For example, Mello said, an accident or crime might occur near the end of an officer's shift, and he or she would have the responsibility of completing the investigation

and paperwork. Officers also are required to testify in trials and court time is often overtime.

Overtime is often also required of some to maintain minimum staffing levels, Mello said. That can occur when, for example, one officer has a vacation day and another might have to pick up all or part of that officer's shift to maintain minimum staffing quotas.

Additionally, Mello said, in many cases, base salaries include holiday pay. And added to that base pay in some cases, is educational incentive pay. A uniform allowance is also added, he said.

Then there's the ubiquitous private duty detail wages many officers earn.

Those security assignments are required of private vendors n like utility companies, bars, clubs and organizations when they host large-scale functions, at the rate of \$30 per officer per hour. The town earns a \$4 administrative fee for processing those assignments, then pays the officers at a rate of \$26 per hour.

<http://www.thewesterlysun.com/articles/2006/03/26/news/news8.txt>

THE 'MONEY MAKER' SERIES RECORDS: IT WASN'T ALWAYS EASY

BY THE SUN STAFF

In the case of Westerly, the process was like pulling teeth. In other towns, the Sun's requests for the top 10 wage earners among municipal and school employees n all public records n were furnished with little brouhaha.

In preparing for this five-day series, The Sun had a basic premise: Who were the top 10 earners in each of our region's towns and school districts in 2005?

The first request for these public records to the town of Westerly was made in late January. After weeks of calls to town officials to learn the status of the request, and numerous discussions later, pounds of paperwork n 5 inches thick n were handed over.

The documents included a morass of payroll data n separate listings of 26 pay periods for each and every municipal worker, including part timers. It was overkill.

What The Sun had requested, under state open government and access to public records laws, were documents that would simply establish the highest paid town employees.

Under the Rhode Island APRA, towns and/or school districts are generally allowed to charge \$15 per hour for preparation work, and 15 cents per page for documents. But after

providing an initial estimate that the work would cost The Sun \$75, the town sent a bill for \$240.

The Sun met with Town Manager Joseph T. Turo to argue that the documentation was too voluminous; all that was needed was the list of the highest paid employees. But Turo said the initial request was “unclear” and that the town had “no list like that” anyway.

Turo was asked if there was an accounting, based on W-2s, of all municipal salaries, including overtime. He replied there was not, saying that a document such as that would have to be “generated.”

Eight days later on March 10 the town provided The Sun with a list of gross wages for all town employees. It was a five-page document accompanied by a bill for an additional 2½ hours of clerk labor. A reporter then simply had to search that list for the 10 highest paid. The list included the employees’ names, positions, overtime and if any and base salaries and gross wages for 2005. That task took around 10 minutes.

Westerly schools were not as difficult, though the effort took a couple of tries.

On Feb. 23, The Sun requested a list of the 10 largest dollar amounts paid to Westerly public school employees between Jan. 1 and Dec. 31, 2005.

Nine business days later, on March 8, Schools Superintendent Thomas DiPaola forwarded a list of salary figures but without names or positions and prepared by Director of Finance and Administration Ellen Eggeman.

Eggeman said School Solicitor William A. Nardone had initially instructed her not to provide names, but said she would provide the positions. After trading phone messages for several days and speaking with DiPaola, The Sun received the complete information with names on March 16.

In Stonington, officials were accommodating in providing the top 10 salary listings for both municipal government and school employees.

Frank Connolly, the business manager for Stonington schools, provided the list the same day it was requested, breaking it down by position. Connolly also offered his help if there were any questions or concerns after reviewing the top 10 list.

Maryanna Stevens, the town’s director of finance, provided the list two days after The Sun requested it, most impressive considering she is in the middle of budget proceedings for the town. She also offered to be available for questions.

Hopkinton also responded in a timely fashion.

Finance director Janice Bergeron, following The Sun’s written request and subsequent payment for the list, hand delivered the material within a week with detailed information,

including the employees listed in alphabetical order with position, base salary, overtime, benefit reimbursements and total gross wage information written in a database-style format.

Positions that had turned over and been filled for only part of the year, such as the listings for former Town Manager Daniel Salerno, were noted in the paperwork.

The newspaper was billed \$75 by the town. The invoice from Bergeron on Feb. 2 stated that the amount stemmed from five hours of work at a \$15 per hour rate.

It was smooth n albeit slow n sailing in Richmond.

After submitting a written request to Town Treasurer Gary Tedeschi, the information was faxed within a month. The information was faxed initially to an incorrect number a week after the request, but the matter was straightened out quickly.

Following The Sun's Access to Public Records Act Request for the information on Jan. 26, town solicitor Michael Cozzolino wrote back on Feb. 3 explaining that he had "just returned from vacation and received a copy of your letter from Mr. Tedeschi. Please be advised that we will need some additional time to compile all the information you requested and this letter will serve as notice that an additional 20 days will be required."

The list of the highest earners came soon after the letter was received from the Town of Richmond, which Tedeschi said he compiled from the W-2 forms of town employees.

As in Hopkinton, each employee was categorized alphabetically with their position and salary included.

Richmond did not charge The Sun for the information.

In Charlestown, a line-item request for employee wages on Jan. 27 was returned without names on Feb. 7, though town Treasurer Gail E. Wilcox provided the names to go with the salaries in a follow-up phone call. The 4-page document included base salary, overtime and total W-2 compensation for all 164 budgeted town positions.

Meanwhile, Chariho Regional School District officials informally requested an extension to compile wages while Administration and Finance Director Brian P. Stanley was on vacation. He later sent The Sun an extensive, 12-page list on Feb.13 that itemized hundreds of employee salaries in descending order. The document includes base pay, overtime, stipend, severance and insurance buy-back listings.

North Stonington officials were also accommodating and promptly gathered the information.

Separate lists for school and town officials were provided within 24 hours of a request by the paper.

New York

Ithaca Journal

<http://www.theithacajournal.com/apps/pbcs.dll/article?AID=/20060316/NEWS01/603160301/1002>

Forty years into Freedom of Information Act, sunshine is getting dimmer

By NICOLE GAUDIANO
and ELLYN FERGUSON
Gannett News Service

WASHINGTON — The last any family members had heard of Joe Grant's grandfather was a postcard and a box of oranges he sent from Florida in the 1940s. He left behind a wife, four children and many questions.

Some thought he died in a Texas fire in 1947. Others said he boarded a ship to Russia. Remembering tales of his grandfather's socialist leanings, Grant asked for information from the FBI, which he thought might have tracked his grandfather during the communist “red scare.” He was right.

His grandfather's age, address and occupation were all listed in a report, created after he signed a petition to put a Communist Party candidate on the ballot in Cincinnati. It was the clue that ultimately led Grant to his grandfather's 1957 death certificate and put his family mystery to rest.

Grant found out his grandfather had worked as a brick mason in the Midwest, took a new wife and died at age 69 in Florida.

“After 75 years of searching for him by different family members, we now know what happened because of a simple form that came about by the Freedom of Information Act,” said Grant, of Greenville, S.C.

Millions of people — from academics, journalists and lawyers to average Americans looking for answers — seek information from the federal government each year through FOIA, a 1966 law granting access to federal records.

The law's 40th anniversary comes at a time when federal agencies are expanding their interpretations of the law's exemptions and characterizing more unclassified material as “sensitive,” says Paul McMasters, First Amendment expert for The Freedom Forum.

“There are still mountains and mountains of material that should be in the public domain that are not — simply because control of information is just sort of a reflex notion among those who hold it,” he said.

Gannett News Service reviewed the FOIA response rate of the 25 federal agencies or departments that receive the most requests, comparing the most current available data, from 2005 and 2004, to 2001. Among the findings:

- Full or partial denials have increased since fiscal 2001 for 16 of the agencies examined.
- The Department of Homeland Security and Department of Veterans Affairs had the biggest backlogs of requests in 2004.
- The National Science Foundation partially or completely rejected a higher percentage of FOIA requests than the CIA in 2005. Leslie Jensen, the Foundation's FOIA officer, said that's partly because many requests involve grants, which include Social Security numbers and other personal information.

Steven Aftergood of the Federation of American Scientists has noticed information is harder to get. He used to buy the Defense Department's telephone directory. But a department representative told him in 2002 it was now classified "for official use only."

His routine requests for the CIA director's unclassified policy orders hit a wall in 2004.

"Those directives are one of the few open windows into U.S. intelligence policy," said Aftergood, who runs the federation's Project on Government Secrecy.

More restrictions after 9/11

The increased withholding of information began soon after Sept. 11, 2001. Former Attorney General John Ashcroft issued a memorandum to federal departments that is considered by many as a reversal of his predecessor's "maximum disclosure" goal. Instead, Ashcroft promised to defend decisions to withhold information unless they lacked a "sound legal basis."

Congress also expanded the definition of sensitive-security information when it created the Department of Homeland Security in 2002.

"Saying people should be cautious about information they give out — that's not wrong, and it's part of an ongoing dialogue," said Jim Carifano, a defense and homeland security senior fellow with the Heritage Foundation, a conservative think tank. "You can find examples where there's appropriate safeguarding of information and areas where there's an abundance of caution."

But after six administrations in Washington, Sen. Patrick Leahy, D-Vt., said: "I have never seen such secrecy."

For example, various intelligence agencies have reclassified an estimated 55,000 pages of previously declassified documents held at the National Archives.

Leahy is pushing several bipartisan bills that would strengthen the FOIA law and set up a commission to examine the increasing backlogs in processing information requests.

“I think part of (the backlog) is the Ashcroft memo and part of it is an administration that doesn't want to answer questions,” he said.

How backlogs translate into response times is hard to say because departments report processing times differently.

Today The Journal offers the first of a three day series of articles highlighting Sunshine Week, which is March 12-18.

Sunshine Week is a national initiative to open a dialogue about the importance of open government and freedom of information. Spearheaded by the American Society of Newspaper Editors, the effort expands on the Sunshine Sunday concept begun in Florida in 2002 and since observed in several states.

TODAY: A look at the federal response for information requests.

FRIDAY: A look at state laws restricting access to information

SATURDAY: How government bodies in our area govern the public's ability to speak during open meetings

The Saratogian

http://www.saratogian.com/site/news.cfm?newsid=16313969&BRD=1169&PAG=461&dept_id=17708&rfi=6

Forum looks at open government

JIM KINNEY, The Saratogian

BALLSTON SPA -- The state's recognized expert on open government was peppered with questions almost from his arrival at a League of Women Voters forum on the subject Wednesday night.

'I've already talked to people who are having trouble with City Hall in Saratoga Springs,' Robert Freeman, executive director of the State Committee on Open Government, said.

The two-hour event at Saratoga County's Cooperative Extension Auditorium in Ballston Spa was held to mark Sunshine Week, a national program meant to emphasize the importance of open public meetings and access to government documents and records through freedom of information, or 'sunshine' laws. Saratoga Springs Supervisor Joanne Yepsen organized it in conjunction with the League of Women Voters.

Later, he asked people in the seats to raise their hands if they were angry. Three-quarters did so.

'We are all here because we are angry,' Freeman said.

Sunshine Week is timed to coincide with the March 16 birthday of President James Madison, considered the father of open government.

The event drew about 80 people.

Freeman's advice was very simple. Government meetings, which include workshops and discussion sessions, and government records, are all open unless having them open would hurt

someone. That hurt could come from ruining a real estate deal, violating someone's privacy or endangering public safety.

'Embarrassment is not one of the grounds for denying records,' Freeman said. 'It's not one of the grounds for entering into executive session.'

The viable grounds include working on a real estate deal, discussing litigation strategy or discussing an individual's personnel record.

Blair Horner, legislative director for the New York State Public Interest Research Group, gave a concrete example: New York state makes available the mortality rates for heart-bypass patients at hospitals around the state. Research shows that making that information public cuts mortality rates by 40 percent.

'By holding government accountable, you improve the delivery of service,' Horner said.

The Saratogian's managing editor, Barbara Lombardo, said the paper has used the Freedom of Information Law to get information on stories ranging from the finances of the Saratoga Performing Arts Center to Saratoga County's no-bid policy for buying medications for the jail.

But all isn't well. Horner said NYPIRG sent FOIL requests to 142 state agencies last year, and despite being told it was a test of how well they complied with the law, a quarter of the agencies didn't meet deadlines.

He said the state tried to weaken the law following the terror attacks of Sept. 11, 2001.

'We don't need to make the loopholes bigger,' he said.

He also called for government to put information on the Internet, where it would be accessible to all.

Several members of the Saratoga County Board of Supervisors were also in attendance. The county board went into executive session twice this week to discuss its strategy in an upcoming hearing before the Adirondack Park Agency.

'If anyone has any problems with FOIL requests, I'd like to hear about it personally,' board chairman and Moreau Supervisor Harry Gutheil said.

Gutheil can be reached at Moreau Town Hall, 792-1030.

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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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Westchester Journal News

<http://www.thejournalnews.com/apps/pbcs.dll/article?AID=/20060316/NEWS02/603160386/1018>

Yonkers mayor, open government watchdog blast council over secrecy

By MICHAEL GANNON
mgannon@lohud.com
THE JOURNAL NEWS

YONKERS — The City Council's closed-door negotiations with three developers over a deal that would launch a \$3.1 billion redevelopment plan for the downtown and waterfront is drawing the ire of Mayor Phil Amicone and skepticism from the state's top authority on open government.

Robert Freeman, the executive director of the state Committee on Open Government, said the council Real Estate Committee's closed meetings to discuss the proposed real estate transactions did not fall under the exemption carved out in the state Open Meetings law. The talks have involved developers Louis Cappelli, Bill Struever and Marc Berson and their plans to bring a minor league ballpark downtown and to redevelop much of the city's southwest side.

Freeman offered his opinion after being contacted by The Journal News yesterday, as Amicone and City Council members exchanged barbs over the closed sessions. A spokesman for the mayor took the council to task for operating in private; the council said it was trying to salvage a poor deal negotiated by the mayor.

The council has met four times in closed sessions since Feb. 21 to discuss what is known as a master developer designation agreement that would give Struever Fidelco Cappelli LLC, the name of the partnership, exclusive rights or six months to develop a master plan for the area. The council plans to meet again in private Tuesday.

The draft agreement calls for the developers to pay \$10.4 million for a city parking lot known as Chicken Island, the old library building on Main Street and waterfront property owned by the city's Community Development Agency. That draft was crafted by the developers and the mayor after the council balked at an earlier version that called for lower sale prices but also included a pledge from the developers to rebuild a city garage.

The council closed the discussions to the public, citing an exemption in the state Open Meetings law that allows public bodies to meet in private to discuss property sales or purchases, but "only when publicity would substantially affect the value thereof." Freeman said that exemption did not apply in this case.

"There are no other parties to the agreement, and everyone knows where the property is," Freeman said yesterday. "I think you'd be hard-pressed to explain how publicity would negatively impact the price of the property."

The issue came to the fore yesterday after Amicone spokesman David Simpson criticized the council for meeting in private. He said the council has been meeting for "hours at a time" in closed sessions, with no clear reason for doing so. He criticized the

council, saying it demanded open government from the administration, then conducted its business in private.

"The administration has done everything in its power to be open and respectful of the public," said Simpson, who was asked to leave at the onset of a council meeting Monday during which the entire council haggled with the developers. "We find (the closed meetings) disappointing."

Al DelBello, a lawyer for the developers, said it was the council's prerogative to close the meetings. He said his clients would "play by the rules, whatever the final outcome is."

Council members had mixed reactions to Freeman's opinion, but were united in panning Simpson's criticism.

"Everything is at stake here," said Councilman Dennis Robertson, chairman of the Real Estate Committee. "This is all confidential information. Maybe if the mayor wasn't in such haste to get this done, he would have done it right the first time."

Councilman John Murtagh, R-5th District, joined Robertson, D-3rd District, in criticizing the Republican mayor's deal but conceded Freeman's opinion gave him "some pause."

Democratic City Council President Chuck Lesnick joined Robertson in defending the private talks. He said he disagreed with Freeman, noting the deal could involve the city financing the acquisition of certain property. Those details could drive up the price of property.

Lesnick, however, was more diplomatic in reacting to the administration's criticism.

"The mayor is frustrated it's taking longer than expected," he said. "But in the long run, I think we'll have a better (deal)."

<http://www.thejournalnews.com/apps/pbcs.dll/article?AID=/20060312/NEWS02/603120313/1020/NEWS04>

Cops again flunk test of speedy access to arrest logs

By **RICHARD LIEBSON**

rliebson@lohud.com

THE JOURNAL NEWS

They still don't get it. A year after an audit by The Journal News of Lower Hudson Valley police departments found that most didn't comply with the state Freedom of Information Law, a selective new survey by the newspaper shows that local cops still greet requests with suspicion, ignorance, red tape and, in many cases, outright refusal.

"You won't even tell me why you want it," an agitated North Castle police officer said when a reporter who did not identify herself was persistent in asking for two days' worth of arrest information. "It's not happening."

On Monday, March 6, reporters went to 20 Westchester, Rockland and Putnam police departments and asked for the names, addresses and charges against everyone arrested over the previous Saturday and Sunday. They did not identify themselves as journalists unless asked.

Robert Freeman, executive director of the state Committee on Open Government, has said that anyone should be able to obtain such routine information "without hesitation."

"There are no secret arrests in this country," Freeman has said.

The newspaper found plenty of hesitation and confusion by police, and ultimately received the arrest data from only six departments, five of which did not comply until discovering that the request was being made by a journalist. The reporter sent to the state police barracks in Brewster was unable to make the request because no one was there. The barracks is not staffed full time.

Although the law does not require people to identify themselves or say why they want the information, almost every department asked.

A woman at the Harrison police records office said she had to know why the information was being requested. She then asked if the woman seeking the records was "with a newspaper." When the reporter said that she was, the clerk replied that "you should have said that," and proceeded to provide the information.

A Hastings-on-Hudson officer said he needed to know why the request was being made because he didn't know whether it would be used to "plan something against someone."

In Mount Vernon, a reporter was told to glean the information, which was incomplete, from the criminal calendar on a City Court bulletin board.

In White Plains, a reporter was directed to the night desk at 4:20 p.m. Once there, the desk officer discovered that the reporter worked for the newspaper and told her to see the public information officer, who was gone for the day.

At the 3rd Precinct in Yonkers, the desk officer said the information could not be released because it was confidential.

The woman at the Clarkstown police headquarters records window seemed dumbfounded at the request.

"You want information on all the people arrested over the weekend in Clarkstown? I can't just give you that," she said.

Freeman said he wasn't surprised by the results of the newspaper's audit.

"It seems that there is more resistance to releasing public information within the law enforcement community than in other agencies," he said. "The police are supposed to comply with the law, which says that records are presumed to be available to the public. And they shouldn't have to jump through a lot of hoops for something as routine as arrest information."

While few departments provided the information when it was requested, half asked visitors to put their requests in writing and provided forms to do so. Some sent reporters to the town or village clerk's office to make written requests. Most of the forms, apparently created by the individual departments, asked why the information was being sought.

"That's not something they're entitled to," Freeman said. "Whether you're talking about the letter of the law or the spirit of the law, the police don't have the right to ask you why you want information."

He also said the FOI Law "does not distinguish between those who seek records. The media does not have any special rights. A record that is made available to the media should be made just as available to a member of the public."

The law gives agencies five business days to acknowledge receipt of the request; by Friday a handful of police departments had done so.

Brian Nickerson, director of Pace University's Michaelian Institute for Public Policy and Management, said police "may be more skeptical of information requests because of the amount of media attention they receive. They already feel like they're operating in a fishbowl."

He said that while "the backroom management — the upper-level supervisors — may not share that attitude, it hasn't trickled down to the frontline people who deal with the public."

The only law enforcement agency that passed The Journal News audit with somewhat flying colors was the Carmel Police Department. A woman at the records bureau had a visitor fill out an FOI form and suggested that she "just wait till tomorrow — it will be in the paper. That's probably fastest."

She was wrong.

A short time later she took the form to a back office. A uniformed officer returned and provided copies of arrest records from a binder marked "Arrest log." In last year's audit, Carmel police failed to respond to a request for arrest information.

"I'm glad to hear that we did well this year," said Carmel Lt. Michael Cazzari, who handles FOI requests for the department. He said the department asks that requests be made in writing "as a record-keeping mechanism," but "we try to give people routine information like this without making them wait."

State police in Cortlandt and Somers also gave a visitor the information requested, after discovering that they were dealing with a reporter.

Lt. Glenn Miner, spokesman for the state police, said that while the agency "goes out of our way to cooperate with the media in a timely fashion," people making information requests as private citizens would normally be asked to fill out an FOI form and go through a review process.

"We do feel that it's important for the media to fulfill its role as representatives of the public," he said. "We actually get more freedom of information requests from the public than we do from the media, but they usually call and are directed to my office or to the records division to file their requests."

Freeman said the newspaper's audit is indicative of a trend that has occurred since the Sept. 11, 2001, terror attacks.

"Unfortunately, withholding information seems to be more acceptable at all levels of government in recent years, and particularly among law enforcement agencies," he said.

<http://www.thejournalnews.com/apps/pbcs.dll/section?category=NEWS02&template=theme&theme=foil06>

Police departments defend FOI response

By RICHARD LIEBSON
THE JOURNAL NEWS

They didn't provide basic arrest information "without hesitation" during a Freedom of Information audit by The Journal News last week, but local cops did little hemming and hawing when asked about their reaction to the newspaper's findings.

"I thought it was somewhat misleading," state police Lt. Glenn Miner said of Sunday's report on the police survey. "We have to review these requests and gather the information. We have to balance the public's right to know with the accused's rights to a fair trial and the privacy rights of victims. ... Asking a police officer to just drop everything and fill an FOI request immediately, that's just not reasonable."

On March 6, a team of reporters visited 20 police agencies in the Lower Hudson Valley asking for the names, addresses, ages and charges of everyone arrested the previous Saturday and Sunday. The reporters did not identify themselves as such unless asked.

In the end, only one department — Carmel — provided the requested data without first discovering that they were dealing with a journalist. Most required the request to be put in writing and said it would take several days to review.

Within a few days, a number of the departments did mail the information or notified reporters that they could pick it up.

"To me, there's really no excuse for that," said Robert Freeman, executive director of the state Committee on Open Government.

"It's routine information that they probably have at their fingertips. If they were following the spirit of the law, there's no reason for them not to provide the information immediately, without hesitation."

Miner, and most other police officials interviewed yesterday, disagreed.

"That's Mr. Freeman's opinion; it's not state law," he said.

"There is absolutely no legal requirement that says records are to be made available without hesitation," said Capt. William McNamara of the Putnam County Sheriff's Office.

"If you're talking about the spirit of the law, you can take it to an absurd level. Do you want me to stop taking information about a robbery that just occurred so that I can fill an FOI request without hesitation?"

Clarkstown Sgt. Harry Bauman noted his department said the records would be available at the end of last week, but no one ever came to pick them up.

"Fair is fair," he said. "We told you when the records would be available."

Bauman said weekend arrest reports are not immediately available on a Monday morning, and it takes time for police to compile them and remove information that is not public.

"If you're talking about 25 or 30 arrests, that can take a little time," he said. "And we do have to check to make sure that we're not releasing information that we're not allowed to release — things like Social Security numbers or telephone numbers."

In Yonkers, a reporter was told by one precinct sergeant that arrest information is confidential.

Another precinct directed her to police headquarters, where after she was identified as a reporter she was given the data.

"Your reporter may have been correct about what happened at the precincts, but the bottom line is that when she came here, she got the information she asked for," said Lt. Maureen Zadorozny.

Most departments questioned the newspaper's methods and strongly disagreed with Freeman's contention that the data should have been released immediately. Several argued that by making the information available within a few days, they followed the letter of the law. Many defended the way they handled the audit and FOI requests in general.

"John Q. Public does not come in and ask for arrest information," said Miner, of the state police. "They ask for specific records, and we fill those requests in a way that is consistent with the law. As far as providing immediately to the media, we feel that we go out of our way to do that. We want news of arrests and investigations to be disseminated and to let the public know that we're doing our job."

"I feel that we absolutely complied with the law," McNamara said. "We made the information available within three days."

He said that police may seem more protective of records than other government agencies, but defended that attitude, saying "there's very little about a zoning board record that's going to stigmatize you the way I could if I give out the wrong information on a criminal case. Police need to be more circumspect."

At the same time, he said, "there is some confusion in interpreting the law, and there are differences in the way departments maintain records and handle these requests. There certainly is a need for some clarification on some of these issues."

FOI panel planned

Dobbs Ferry Police Chief George Longworth, legal counsel for the Westchester County Association of Chiefs of Police, said the group plans to create a panel to discuss the issues departments face in dealing with Freedom of Information requests and try to develop a model policy for handling them.

"If it's broke, we want to fix it, but I don't think it's as clear-cut as the newspaper story made it out to be," Longworth said. "You asked for arrest information, but what if there's a person arrested under sealed indictment, or a case where both parties in a domestic incident are arrested and can be considered both suspects and victims? There's a lot of room for discussion on these kinds of issues."

Longworth said the panel will include police chiefs, a criminal lawyer and a municipal attorney as well as a member of the media. He also said he will invite Robert Freeman, executive director of the state Committee on Open Government, and professor Brian Nickerson, director of Pace University's Michaelian Institute for Public Policy and Management, to participate.

Meanwhile, Harrison Police Chief David Hall, president of the state police chiefs association, said he plans to mail copies of the New York Freedom of Information law "to every chief in the state. I thought that after you did the story last year the chiefs would take care of the problems themselves," he said. "I guess that didn't happen."

<http://www.thejournalnews.com/apps/pbcs.dll/article?AID=/20060312/OPINION03/603120359>

Commentary: Open government laws cut your taxes

By **ROBERT FREEMAN**,
Executive Director, New York Committee on Open government

There is no doubt that a cost is incurred by government agencies when they must locate, review and make records available following requests made under the Freedom of Information Law. But it is equally clear that disclosures through the use of FOIL save taxpayers millions of dollars — far more than the cost of implementing the law.

To illustrate, last year The New York Times published articles concerning fraud and abuse in the Medicaid program. Reporting that billions of dollars were misspent every year, the newspaper further wrote that, based on records obtained under FOIL, there were numerous indications of fraud and abuse that the state had never looked into"

Just two days later, the Times reported that Gov. George Pataki had ordered an overhaul of the agencies charged with protecting Medicaid from fraud and created an independent inspector general's office.

The designation of an inspector general, coupled with better government oversight, will result in less fraud and waste. Just as important, when Medicaid providers know that the government is watching, they will be less likely to cheat. Disclosure, even the possibility of disclosure, will save taxpayers' money. Assuming that Medicaid "fraud, waste and profiteering" run into the millions, the use of FOIL by the Times and its aftermath will save taxpayers millions of dollars over the course of years.

Another example involves the abuse of E-Z Pass. The Albany Times-Union, using FOIL, reported millions of dollars in uncollected E-ZPass Thruway tolls and fines. Soon after, the Thruway Authority retained a collection agency to recover the money. Even if a quarter of the total is eventually collected, taxpayers will gain more than \$5 million through the use of the FOIL.

When government agencies solicit bids for the purchase of goods and services and a potential bidder uses FOIL to obtain the current contract, he can offer the agency a better deal. Considering the purchases by counties, cities, towns, school districts and state agencies, taxpayers realize untold savings due to disclosures under FOIL that likely involve millions of dollars each year.

FOIL has real value, as does its companion, the Open Meetings Law. The latter requires that meetings of government bodies be conducted in public, unless there is a basis for entry into an executive session. It provides a unique opportunity for the public to

observe elected and appointed officials and gain insight into the decision-making process. Additionally, it offers a means of knowing where those officials stand and the potential to affect the course of government.

Both FOIL and the Open Meetings Law include enforcement provisions. However, the teeth in those statutes are clearly baby teeth. While the governor and the state Legislature strengthened FOIL last year by imposing more specific time limits for agencies to grant access to records, that serves as an initial step in improving the law. There remain too many instances in which agencies unreasonably delay disclosure.

The legal remedy for challenging an agency's action or non-action involves bringing a lawsuit, but doing that involves too much time and money to be reasonable for most people. Further, although there is a possibility that a court may award attorney's fees to a person challenging a denial of access, the likelihood of an award is remote.

The mechanisms that encourage compliance are provisions requiring responses to requests within prescribed time limits, a first step that has been accomplished, and those that enable the public to use the courts effectively. Guaranteeing the award of attorney's fees when agencies fail to respond in a timely fashion or deny access without any real justification would be a welcome and long overdue second step.

Legislation has been introduced in the Assembly (A. 9661) that would require a court to award attorney's fees to a successful plaintiff when it is clear that the agency failed to comply with law. Other legislation (A. 8008) would make an award of attorney's fees mandatory when a court has found that a government body has violated the Open Meetings Law by deliberating or taking action in private in violation of law. The certainty of an award of attorney's fees in a proceeding in which the court finds that substantial deliberations were conducted in private in violation of law would serve as a significant and meaningful deterrent.

Both bills should be enacted. They would give open government laws real teeth, making them more useful and meaningful to every resident of New York.

<http://www.thejournalnews.com/apps/pbcs.dll/article?AID=/20060312/NEWS05/603120312>

Bills pending in Albany to widen access to records

By NICK REISMAN

ALBANY BUREAU (Original publication: March 12, 2006)

ALBANY — Lawmakers have proposed several measures this year that would expand access to public documents by requiring them to be posted on state agency Web sites.

"It makes sense that we utilize all the technological tools we have by making public documents available on the Internet," said Sen. Nicholas Spano, R-Yonkers, who is

sponsoring a version of the bill in the Senate. "Most of the information we have right now is already online."

Public documents can be obtained through the state's Freedom of Information Law. But government agencies have up to 20 days after receiving a request to provide records or explain why it will take longer.

The timeline was a major change that came out of the 2005 legislative session.

Before that, state and local governments had five days to respond to a request, but they could simply acknowledge the request and promise a response within 30 or 60 days, for example.

Spano said that his bill makes sense because it would save money for both the state and those who request information.

Agencies can charge up to 25 cents per page for copies of documents.

"Technically, it would actually be pretty easy, and in many respects easier than a paper process," he said.

The latest addition to the state's open-records law is a logical update to meet 21st-century needs, said Blair Horner of the New York Public Interest Research Group.

"Google puts the world on the Internet," Horner said of the popular Internet search engine. "The magic of the Web really allows you put anything up on the Web. It would be like a search engine on each one of the state agencies' Web sites."

Horner said that if passed, the measure could "make the paper and 25-cents-a-page fee obsolete."

But if compiling thousands, if not millions, of public documents and records online would be a challenge to begin with, protecting personal privacy should also be a concern, said Robert Freeman, director of the state Committee on Open Government.

"Generally speaking it's a great idea," he said. "Many records have historically been public, but whether it's wise to put all of them in cyberspace is questionable. While the public clearly benefits by having the ability to obtain government information online, we have to be careful to protect against identity theft."

For example, Freeman said, property assessment records have always been available to the public.

But they also contain names, addresses and floor plans to private homes. Freeman said the same danger goes for putting voter registration records online.

"Those can be used to acquire any number of items about us," he said. "We have to think about it before we do it."

Assemblywoman Amy Paulin, D-Scarsdale, introduced a bill that she said would make sure government agencies paid attorneys' fees when they lost cases related to violations of the Open Meetings Law, which guarantees public access to most of the deliberations of public bodies.

"We almost never see those attorney fees rewarded," said Paulin, who also introduced a different version of Spano's bill in the Assembly. "That's a real deterrent from bringing a case."

Current law says government agencies that lose cases involving open access to public meetings may pay attorneys' fees, but in many instances they don't, Paulin said.

Her bill, she said, wouldn't give any agencies wiggle room to not pay.

"Transparency is critical to maintaining a government that's open and responsive," Paulin said. "If there's a way to do it, we should."

Assemblyman RoAnn Destito, D-Rome, Oneida County, is proposing legislation similar to Paulin's, except that it deals with government agencies' having to pay attorneys' fees when they lose cases dealing with violations of the open-records law.

Newsday Long Island

<http://www.newsday.com/news/local/wire/newyork/ny-bc-ny--sunshineweek-ny0311mar11,0.5927157.story?coll=ny-region-apnewyork>

By MICHAEL GORMLEY
Associated Press Writer

ALBANY, N.Y. -- In the dark days following Sept. 11, 2001, it started to get darker in New York for the public's right to know.

One measure proposed in the legislative sessions following the terrorist attacks would have denied the public's right to public records involving nuclear power plants, airports and utilities. That would put the records off limits to residents worried about their safety. Another, proposed in May 2002, would have added one sentence to the state Freedom of Information Law that could have, in the wrong hands, negated almost all the other sentences. The proposal would have restricted any material "obtained or compiled in monitoring, investigating or preparing for suspected or potential terrorist activity."

The bill made it to the floor of Senate. But like most of the other bills aimed at restricting the state's so-called sunshine laws it was opposed by the Democrat-led Assembly.

"The governor was basically arguing that anything could be denied that could be considered part of any terrorist activity," said Blair Horner of the New York Public Interest Research Group. "One of the possible casualties of Sept. 11 could have been access to public information ... as the horror of Sept. 11 has receded, I think people are taking a more sober look at the need for public access."

Since Sept. 11, 2001, as many as 150 bills that would have provided exemptions to access to government records and open meetings were proposed, most between 2002 and 2004. But only two major bills became law. The first was the "critical infrastructure" law proposed shortly after Sept. 11, putting public records about nuclear power plants, airports and utilities off limits to the public that supports them. But the measure changed drastically by the time it was adopted in August 2003.

The New York Publishers Association particularly credits Pataki for amending the proposal. Now the records are still available to the public, but only after the request meets certain criteria designed to make sure the release will benefit residents, and not threaten their safety.

"There was, nationally, such a strong desire to just close off everything to protect us from terrorists," said Diane Kennedy of the newspaper publishers lobbying group. "I thought it was a very courageous thing for the governor to say, 'No, we are going to redraft that legislation and make it accessible under FOIL' ... the governor's language was even better than what we were asking for."

The other major public access bill was passed in 2005 and called the greatest strengthening of the state Freedom of Information Law in decades. The measure requires governments to grant or deny a written request within 20 days of its receipt. If the release of data must be delayed, the government must identify a date that records will be provided. Failure to follow the new rule would be considered a denial of a Freedom of Information Law request, and that could lead to civil court action.

Previously, state and local governments could take months or years to release documents to the public. A FOIL request filed by The Associated Press in 2000 seeking records of proven cases of cheating by teachers from the state Education Department wasn't answered for three years. Another filed by The AP with the State University of New York for compensation, world travel and other expenses of the chancellor went unanswered for 10 months.

"I think cooler heads prevailed in New York more than in other states," said Robert Freeman, director of the state Committee on Open Government that protects and promotes the public's right to known under open records and meetings laws. "It seems there has been more thoughtfulness in New York for freedom of information than in the past."

He credits last year's inaugural "Sunshine Week" for part of that. Hundreds of newspapers statewide devoted space to revisiting the status of open records and meetings

for the public. Accounts of egregious denials by governments of records requested by their citizens and editorials fueled legislative efforts.

Freeman said the attention has been a caution to government officials who might act hastily in what they believe is in the public's security interest. The advice is in the agency's annual report is what Freeman calls the Aretha Franklin rule: "You better think."

<http://www.newsday.com/news/local/wire/newyork/ny-bc-ny--sunshinelaws0315mar15,0,1861755.story?coll=ny-region-apnewyork>

Assembly passes open government bills

ALBANY, N.Y. (AP) _ The Democrat-led Assembly passed several bills Wednesday that lawmakers said would help make government more open to the public.

One measure, sponsored by Democratic Assemblywoman RoAnn Destito, would require attorney's fees be paid to those whose requests for records under the state Freedom of Information Law are denied without justification or wrongly delayed. The bill is being sponsored in the Senate by Republican John DeFrancisco.

The state's highest court, the Court of Appeals, ruled last year that under current law, documents sought under the state's FOIL statute must be of significant interest to the public to justify the state paying the attorney fees to get those records. Open government advocates said the ruling left little recourse for residents and small newspapers that are denied access to records by state agencies.

"This proposal would create a clear deterrent to unreasonable delays and denials of access and encourage every unit of government to make a good faith effort to comply with FOIL requirements," Destito said.

Other bills approved by the Assembly would make copies of records of the state Ethics Commission and Legislative Ethics Committee available to the public, allow FOIL requests to be made by e-mail, and require officials to provide interpreters and listening devices for the hearing impaired at public hearings under certain conditions.

The Assembly also voted to require certain records discussed at public meetings to quickly be made public upon request and allow public meetings to be broadcast or photographed.

Several of those measures are pending in the Republican-led Senate.

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