

# The Pacific and The West

## GUAM

### **Pacific Daily News**

<http://www.guampdn.com/apps/pbcs.dll/article?AID=/20060319/OPINION02/603190309/1014/OPINION>

### **Clarity needed on government's murky deeds**

By Tony Artero

As we celebrate the Freedom of Information Act and the open-government principles on which our country was founded, more remains to be done, because government officials have been secretive and self-serving.

Unclear government actions, which leave Guam less and less appealing, need to be cleaned up. The deficit, Ordot dump, infrastructure, schools, hospital, Tiyan and the environmental conditions are all breaking cover.

Without an open government, the cries of the people on the radio, in the newspaper, on the streets and in private was one of "Deception!" People were angry that Guam, a U.S. soil, had been deceived about the "surprise attack" and occupation by Japan in World War II. The word from Congress then was "no budget" to fortify Guam prior to the outbreak of the war. Had Guam been properly fortified, the amount of money, the number of casualties and the length of the struggle to defeat Japan would all have been a mere fraction of what it was.

After the war, without a voice, the deception accelerated into forceful land takings, followed by the Organic Act to legalize all the wrong actions. Guam regressed and became less desirable. Many left the island for jobs and a better quality of life elsewhere.

I made a conscious decision to stay in Guam after serving my country to help right a fundamental wrong committed by the civil authorities. But too many officials are insensitive to the plight of the people and are self-serving.

The secretive government ignored the sacrifices of our parents and others for justice, liberty and freedom during World War II. The irony of winning World War II was losing one's fundamental economic freedoms under the guise of "national security."

This disorder has been perpetuated by supporters of what has become the status quo. Economic freedoms and justice are not politically correct, crookedness is.

By not restoring the sanctity of private property, the United States and Guam have both struck out. Consequently, all three branches of GovGuam, for decades, have been demanding, in unison, "Uncle Sam, give us money!" GUAM stands for "Give Us American Money." Uncle Sam, knowing all about its wrongdoings, would gladly give, every time. The larger the handout from Uncle, the faster the downward spiral spins.

Guam is where America's prejudice, greed, fraud, waste and abuse run amok, and government dependency begins. Guam has depended on Uncle for so long that, without his grace, Guam would be in dire straits.

With too much of and too secretive a government without accountability, the billions of dollars from Uncle Sam over the years just vanished. Practically all of GovGuam is in disrepair and there is no money. Without economic freedoms, justice and an open government, five generations have seen the compounding problems.

Transparent and honest government is needed before there is an outbreak of uncontrollable civil disobedience, like in other countries. Guam is looking for a political candidate with genuine concern for Guam and its people, who can transparently and sincerely represent them and their posterity.

The people of Guam deserved a far better treatment than what they have received in the past 60-plus years. Serving one's self is out.

## **Hawaii**

### **Honolulu Star Bulletin**

<http://starbulletin.com/2006/03/13/news/story03.html>

# **Struggle focuses on access to records**

**By Mary Vorsino**  
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There is a battle going on -- apparent in at least 11 bills introduced this legislative session -- over the role and authority of the state office charged with interpreting and ordering agencies to comply with Hawaii's open-records and meetings laws.

On one side are open-government advocates who want to give the Office of Information Practices more money and enforcement powers, allowing it to file suit on its own against an agency that refuses to comply with an order.

#### **FOIA Workshop**

The state Office of Information Practices will hold a free workshop Thursday to discuss Hawaii's open-records and -meetings laws. The event starts at noon in room 414 at the state Capitol. For more information, go to [www.hawaii.gov/oip](http://www.hawaii.gov/oip).

Sparring with groups like the League of Women Voters, Citizen Voice and the Hawaii Pro-Democracy Initiative are City and County Council members and the city's head lawyer, who have criticized a number of the OIP's recent high-profile opinions.

They argue the agency needs an oversight board, which would shift the authority of the office from its executive director to a five-member council. The City Council has also tried twice to exempt itself from the state's so-called Sunshine Law.

In the mix are state lawmakers, who killed a bill that would have provided funds to increase the OIP's staff -- a move some say was motivated by an interest to keep the

agency small and overwhelmed with work. The agency now has three full-time attorneys and an operating budget of about \$380,000.

It had asked for \$95,000 to hire one more attorney and a secretary.

This Sunshine Week, which marks the 40th anniversary of the signing of the Freedom of Information Act and runs through Saturday, advocates say there is reason to be worried about the future of openness in Hawaii and around the country.

Nationwide, they say, government openness is under fire in the name of national security. In Hawaii some leaders have argued that it is more efficient for lawmakers to make decisions behind closed doors. "I think sometimes governments want to behave like corporations," said Peter Bower, president of Citizen Voice in the islands. "We need to have an open system."

The OIP was created 18 years ago, and supporters say it has gotten new life under current Executive Director Leslie Kondo, who was named to the spot three years ago by Gov. Linda Lingle. Under Kondo's tenure the OIP has reduced the number of pending requests -- some of which were a decade old -- to 40 from 200.

Also under Kondo, the agency has ruled against the City Council, Kauai County Council, former Mayor Jeremy Harris and a state legislator.

"I believe the open-government groups support what he's doing," said state Sen. Les Ihara, a longtime openness advocate. "He's calling it as he sees it. He's asserting the power of his office that was always there."

But several council members have publicly denounced Kondo's opinions and have criticized the way the OIP is being run under his leadership. The chairmen of the four County Councils supported a bill in the state Legislature that would have created a five-member commission to oversee the OIP.

The bill never passed out of committee.

In January, when the Councils announced the bill's introduction, City Council Chairman Donovan Dela Cruz told the Star-Bulletin that "everyone has noted that some of the opinions that OIP has published are extreme." Last week, Dela Cruz also said that the OIP's interpretations of the law are "just not practical."

The chairmen of the Kauai and Hawaii County Councils did not return several phone calls for comment last week.

Three other bills that sought exemptions to the Sunshine Law have also died, while one that would allow boards to discuss business with less than a quorum at nonboard meetings is still alive.

Meanwhile, two bills that would have called for more sunshine have also not moved. And a measure that would have given OIP enforcement power did not make the legislative crossover.

Kondo said that much of the dispute over how his office is run has gotten personal. "The bill that wanted to put the board over OIP, that was a personal attack. We were being used politically," he said.

He also said that the bill was a "thinly disguised attempt to say Kondo should be out," adding that he would step down if the governor asked him to. "I think sometimes people lose track of the big picture," he said. "They're not sitting on a private board. They're sitting as elected officials."

## Honolulu Advertiser

<http://www.honoluluadvertiser.com/apps/pbcs.dll/article?AID=/20060313/NEWS01/603130361/1001/NEWS>

By [Mike Gordon](#)  
Advertiser Staff Writer

The answers people most want from government often deal with the problems they face closest to home.

From burglaries to speeders, from the quality of their environment to the quality of their children's education, the issues that matter to Hawai'i residents may have started down the street.

Finding answers on subjects you care about is not as intimidating as you might expect, unless the information you're after involves something that agencies can't or won't release.

So Honolulu police can tell you about crime in the subdistrict where you live, but you probably can't find out the details of their investigation into your neighbor's home burglary.

How much information you can get also depends on where you live. For example, Maui police can tell you about crime down to your neighborhood or where you want to buy a home, but Honolulu police aren't set up for that.

Greer Prince, a research analyst with the Maui County Police Department, fields about 100 requests a year from people thinking of buying property but wanting to know first how often a home is broken into.



Cheryl Griffith of Kailua says it's a good idea for the state to post the status of local beaches online. It could save her the trouble of taking her sons Garrett, 12, and Parker, 8, all the way to Kailua Beach only to find out that the water isn't safe enough to enjoy.

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"Some people want you to just say if it is a safe place," Prince said. "That's relative. We can't tell you this is a safe neighborhood but we can tell you what has happened in a neighborhood."

Regardless of the county, it's best to start with a call to the police chief's office and you may need to make a written request for crime information. Research and copying fees are sometimes charged.

To give you an idea of what kind of information is available with a little digging, we looked at issues surrounding three topics of high interest — the environment, education and public safety.

## **THE ENVIRONMENT**

At the state Department of Health, officials recently created a Web site to warn beachgoers about potentially harmful levels of bacteria and pollution in the water. But the department will be the first to admit that the Web page is hard to find and sometimes hard to understand.

"Unfortunately, our Web site is not where we want it to be," said Watson Okubo, supervisor for the monitoring and analysis section of the Clean Water Branch.

Still, the idea sounds good to Kailua residents who have endured several runoff-related beach closures in recent days.

"I think it's great, because my son likes to surf there," said Cheryl Griffith, who uses Kailua Beach often. "You don't have to go all the way down there, and your kids are wanting to go in the water and you get to the beach and there is a warning sign."

When heavy rain flooded Windward O'ahu, the department posted details from six sewage overflows and the affected coastal areas. Specific locations, the amount of sewage that overflowed in each incident and whether warning signs had been posted were all available online.

The state has more than 400 beaches and the busier ones are tested twice a week. Health officials measure what they call "indicator bacteria," which helps determine if any viruses or pathogens are in the water that can make you sick, Okubo said.

One catch to statistics, online or not, is that not all public information is clearly presented.

Dean Higuchi, spokesman for the U.S. Environmental Protection Agency's office in Hawai'i, stressed that a concerned individual should not draw conclusions solely from any Web site. Instead, call the agency that posted the data and speak to someone directly, he advised.

Curious about what is in the drinking water coming out of your tap? The Honolulu Board of Water Supply offers an online search engine that provides a report based on any address, home or business.

"You can type in your address and it will pull up a report for your house," said Su Shin, board spokeswoman. "It tells you exactly what is in your water."

The Consumer Confidence Report, which also is mailed to customers by July 1 each year, lists contaminants found in the water that are regulated by the EPA and the Department of Health, Shin said. The report is mandated by the EPA, but the Honolulu Web site is an extra level of public access, Shin said.

Just because a contaminant shows up on the list does not mean the water is polluted, Higuchi said.

"It lists all the contaminants that are found and whether or not they exceed our standards," he said. "And that is the key. If they don't exceed under EPA or state standards, the water is clean."

The EPA has its own Web site that allows consumers to search for their community's pollution information, Higuchi said.

For example, the public can view the annual toxics release reporting inventory and tailor the search to individual ZIP codes. It shows what businesses — such as power plants, refineries or wastewater treatment plants — use on a regular basis.

Being on a list, however, is not an indictment of wrongdoing, Higuchi said.

"It is not telling you they dumped something," he said. "It tells you they used something."

## **EDUCATION**

Information about the public schools in your neighborhood is plentiful, but it's selective; there's more on demographics and school finances than student and teacher discipline for improper behavior, for example.

Each school has available online a School Status and Improvement Report. It lists an enormous array of student and community demographic information, teacher information, an assessment of whether the school's facilities are adequate and a school quality survey that includes whether students feel safe.

Schools also have two financial accounts that parents might be interested in: a "local" account, which comprises all donated funds, and a larger taxpayer-funded account.

Both are open for public scrutiny, said Catherine Payne, principal at Farrington High School.

It's "big business," Payne said, and she isn't joking.

The January statement on her local account read: \$247,858.19. None of the money is from the state — instead it comes from students; fundraisers; and community donations, which principals can use to pay for a wide array of things, such as field trips.

The larger taxpayer-funded account open for public scrutiny — in Farrington's case, a \$15.5 million budget made up of state and federal funds — is based on the state Department of

Education's "weighted student formula." Funds reflect enrollment and the needs of each student body.

At Jarrett Middle School, Principal Gerald Teramae has a plan on how his school wants to spend \$2.3 million starting next fall — the number of teachers he can hire, clerical staff, new equipment and supplies.

The state Department of Education hopes to post each school's academic and financial plan on the Internet so parents can learn more about each school's goals and expectations, Teramae said.

"The intent is to make everything we do at every level of the department very transparent," he said.

On the other hand, the public does not have access to information about teacher or staff discipline because under union contracts, that information is confidential, Payne said. But the public can review information about the number of student violations, including the number of times a weapon was brought on campus, in the School Status and Improvement Report.

## **PUBLIC SAFETY**

In many instances, public safety information is off limits to the average citizen — you need to be personally involved to see a police report on a crime or a motor vehicle accident.

But statistics on the number of speeding tickets and crimes is not only available, it is becoming more accessible. For Neighbor Islanders, recent improvements in police departments' computerized record-keeping is making data easier to obtain.

Police in Hawai'i, Maui and Kaua'i counties will provide citizens with the number of speeding tickets written in their communities.

On the Big Island and Kaua'i, a citizen can focus that request on a specific street, thanks to computer systems installed last year. But on Maui, police are only able to provide that information by district — there are six — because they have not finished installing their new computer system.

However, if all a citizen wants is broad statistics, Prince can find citation statistics for time periods as short as a single day, she said.

The Honolulu Police Department, however, cannot currently provide detailed speeding violation statistics to the public, said Lt. Bennett Martin of the department's traffic division. The only information available is the number of citations written each week in each of the department's eight districts, he said.

HPD and the state judiciary are still trying to agree on how to exchange detailed statistics from the judiciary's new computer system, which went into service last fall. Historically, the judiciary has stored this information and used to provide printouts for HPD, Martin said.

However, the same new system run by the judiciary can provide the public with the number of citations issued at specific locations, said Marsha Kitagawa, department spokeswoman.

A search fee may be charged, but Kitagawa could not provide a price range without first having a detailed information request. The state Office of Information Practices said search fees are \$2.50 per 15 minutes and fees for review and segregation are \$5 per 15 minutes. But OIP Director Les Kondo said that all agencies are required to waive the first \$30 of any request.

Kaua'i County Police Department Assistant Chief Gordon Isoda said his department's new computer system, installed last year, allows citizens greater access to information about crime activity in their neighborhood.

"If it works as it should, we could tell you the type of crime that happened," Isoda said. "For example, if there was a burglary on this block or that block."

Crimes by street also are available from Big Island and Maui police, but not from the Honolulu police, which can only retrieve statistical information by large area beats and sub-beats.

Crimes on beats can be obtained through the HPD Web site, but there is no description of each beat's geographical boundaries, said Nathan Matsuoka, a research analyst with the department. The public would have to call the main police station or the nearest police substation to learn this, he said.

Information about the number and types of crimes committed at neighborhood schools also is available from all three Neighbor Island counties. On Maui, police can even break it down by time of day: crimes during school hours and crimes afterward. But again, this information is not available for O'ahu residents.

State ranks low in access to information  
Many records available if you learn to dig  
Obstacles still keep public in the dark

<http://the.honoluluadvertiser.com/article/2006/Mar/12/ln/ln02a.html>

## Public information resources

### STATE DISTRICT COURT

**What's in it:** Traffic cases, misdemeanor criminal cases, Small Claims Court cases, temporary restraining orders

**Who can get it:** General public. Certain information is available only to persons involved; other records are sealed by court order.

**Where to get it:** Main District Courts in each county. Rural District Courts have limited public information available.

**What you need:** Requesters must have specific identifying information such as the case file number or date of court appearance. Misdemeanor criminal cases, including traffic offenses, are often difficult to locate.

**What it costs:** \$5 retrieval fee for each file requested. Copying fees: \$1 for the first page, 50 cents per page thereafter. Some files can be retrieved right away while others take as long as a week.

**Contact numbers:** For traffic violations — O'ahu, 538-5500; Maui, (808) 244-2800; Big Island Hilo District, (808) 961-7430; Kaua'i, (808) 482-2300. For small claims/temporary restraining orders — O'ahu, 538-5151; Maui, (808) 244-2838; Big Island, (808) 961-7430; Kaua'i, (808) 482-2300. For criminal cases — O'ahu, 538-5767; Maui, (808) 244-2967; Big Island, (808) 961-7470; Kaua'i, (808) 482-2300.

**Available online?** Partially. Some records can be identified on the Judiciary's Ho'ohiki system, [hooiki2.courts.state.hi.us/jud/Hoohiki/main.htm](http://hooiki2.courts.state.hi.us/jud/Hoohiki/main.htm). Small-claims records must be located using computer terminals at District Court. Certain kinds of traffic information also are available online now free of charge at [https://jimpsps1.courts.state.hi.us/court/ck\\_public\\_gry\\_cpty\\_cp\\_personcase\\_setup\\_idx](https://jimpsps1.courts.state.hi.us/court/ck_public_gry_cpty_cp_personcase_setup_idx).

## STATE CIRCUIT COURT

**What's in it:** Records of civil lawsuits, felony criminal cases, divorce proceedings, mechanic's liens, Family Court domestic abuse criminal cases, probate cases

**Who can get it:** General public. Certain Family Court cases involving minors are restricted to authorized family members. Other records may be sealed by judge's order.

**Where to get it:** O'ahu Circuit Court building, 777 Punchbowl St.; Maui Circuit Court, 2145 Main St., Wailuku; Hawai'i Circuit Court, 75 Aupuni St., Hilo; Kaua'i Circuit Court, 3970 Ka'ana St., Lihu'e

**What you need:** A valid ID

**What it costs:** Self-service copying machine, 15 cents per page; official certified copies, \$1 per page

**Contact number:** O'ahu, 539-4300; Maui, (808) 244-2969; Big Island, (808) 961-7400; Kaua'i, (808) 482-2300.

**Available online?** Partially. Index of each case's records, including scheduled hearing dates, is available via state judiciary's Ho'ohiki site, [hooiki2.courts.state.hi.us/jud/Hoohiki/main.htm](http://hooiki2.courts.state.hi.us/jud/Hoohiki/main.htm). Actual records must be viewed in person.

## STATE SUPREME COURT

**What's in it:** Files of lower court cases now on appeal to the Supreme Court

**Who can get it:** General public

**Where to get it:** Hawai'i Supreme Court, 417 S. King St.

**What you need:** Supreme Court case number, which is different from the lower court case number. Obtain number from lower court case files on Ho'ohiki Web site, [hooiki2.courts.state.hi.us/jud/Hoohiki/main.htm](http://hooiki2.courts.state.hi.us/jud/Hoohiki/main.htm).

**What it costs:** Copying fees, \$1 for the first page, 50 cents per page thereafter.

**Contact number:** 539-4919.

**Available online?** Partially. Appellate decisions are available at [www.courts.state.hi.us/](http://www.courts.state.hi.us/). Documents filed in pending appeals are available only by requesting them in person.

## FEDERAL DISTRICT COURT

**What's in it:** Civil, criminal case files

**Who can get it:** General public

**Where to get it:** Prince Kuhio Federal Building, 300 Ala Moana

**What you need:** A valid picture ID to enter the courthouse. Look up cases by number or name of party on computer terminal in court clerk's office.

**What it costs:** Copying fees, 50 cents for first page; 25 cents each additional page

**Contact number:** 541-1300

**Available online?** Yes, through the PACER system at [www.pacer.psc.uscourts.gov/](http://www.pacer.psc.uscourts.gov/). Users must register and be assigned a password. Download fee of 8 cents per page, capped at a maximum of \$2.40 per document. Complete images of most documents filed since January. Users can gain

access to U.S. District, Appellate and Bankruptcy Court records nationwide. Hawai'i District Court posts docket sheets only on PACER. Additional records/information available at [www.hid.uscourts.gov/](http://www.hid.uscourts.gov/).

### **FEDERAL BANKRUPTCY COURT**

**What's in it:** Bankruptcy case files

**Who can get it:** General public

**Where to get it:** Bankruptcy Court, 1132 Bishop St., Suite 250L. Look up cases on computer terminals at court clerk's office. Cases can be searched by name of individual or business, or by case number.

**What you need:** A valid ID

**What it costs:** Copying fees, 10 cents per page

**Contact number:** 522-8100

Available online? Yes, through the PACER system (see Federal District Court above), [www.pacer.psc.uscourts.gov/](http://www.pacer.psc.uscourts.gov/). Complete images of most Hawai'i Bankruptcy Court documents available. Additional records/information available at [www.hib.uscourts.gov/](http://www.hib.uscourts.gov/).

### **MOTOR VEHICLE COLLISION REPORTS**

**What's in it:** Police reports with names, addresses for everyone involved and a brief collision description and diagram. If the accident is serious enough to prompt a criminal investigation, you will also get the face page of that report. Collision reports are available at the main police station on each island.

**Who can get it:** Anyone involved in the accident

**Where to get it:** Any police station and sometimes at a substation

**What you need:** A valid ID

**What it costs:** First page, 25 cents to \$1; each additional page, 10 cents to 25 cents

**Contact number:** O'ahu, 529-3271; Big Island, (808) 961-2247; Maui, (808) 244-6350; Kaua'i, (808) 241-1660

**Available online:** No.

### **ARREST LOGS**

**What's in it:** A person's name, age and address, and offense the person is suspected of committing are listed on a daily public log

**Who can get it:** General public

**Where to get it:** At the station where a person was arrested and the records division of the county's main police station

**What you need:** N/A

**What it costs:** Free to view, but no photocopying is allowed

**Contact number:** O'ahu, 529-3271; Big Island, (808) 961-2247; Maui, (808) 244-6350; Kaua'i, (808) 241-1660

**Available online?** No.

### **POLICE REPORTS**

**What's in it:** For closed cases, the entire investigation, including witness statements, is included, but in most counties, all names are blacked out.

**Who can get it:** General public, but only after a case is closed. An open case requires a subpoena.

**Where to get it:** At your county's main police station

**What you need:** A valid ID

**What it costs:** First page can cost 25 cents to \$1; each additional page, 10 cents to 25 cents.

**Contact number:** O'ahu, 529-3271; Big Island, (808) 961-2247; Maui, (808) 244-6350; Kaua'i, (808) 241-1660

Available online?: No.

## Retrieving information that matters

When it comes to obtaining government records that bear on your safety, your child's education or your neighborhood environment, some information is readily available while other data may not be publicly available. Read up on your rights to records at [www.hawaii.gov/oip](http://www.hawaii.gov/oip).

### PUBLIC SAFETY

TOPIC	YOU CAN FIND	YOU CAN'T FIND	MORE INFORMATION
<b>Crimes</b>	<ul style="list-style-type: none"> <li>On Kaua'i, Maui and the Big Island, crime statistics are available by streets or neighborhoods.</li> <li>On O'ahu, crime statistics are tallied by officer beats and sub-beats.</li> </ul>	<ul style="list-style-type: none"> <li>The names and addresses of crime victims.</li> </ul>	Big Island police: (808) 961-2244 Maui police: (808) 244-6300 Kaua'i police: (808) 241-1600 Honolulu police: 529-3757
<b>Speeding tickets</b>	<ul style="list-style-type: none"> <li>On Kaua'i and the Big Island, you can find the number of speeding tickets for an area as small as a street.</li> <li>On Maui, that information is only available for districts.</li> <li>On O'ahu, that information is not currently available from the Honolulu Police Department.</li> </ul>	<ul style="list-style-type: none"> <li>The names and addresses of speed limit violators.</li> </ul>	Big Island police: (808) 961-2244 Maui police: (808) 244-6300 Kaua'i police: (808) 241-1600 Honolulu police: 529-3757 State Judiciary: Administrative Director of the Courts: 539-4900
<b>Parolees</b>	<ul style="list-style-type: none"> <li>The names of parolees, the ZIP code where they live, their conviction, when they were sentenced and paroled, their current status and the names of their parole officers.</li> </ul>	<ul style="list-style-type: none"> <li>Their home address, telephone number and personal information, such as Social Security number and date of birth.</li> </ul>	Hawaii Paroling Authority: 587-1293.

### EDUCATION

TOPIC	YOU CAN FIND	YOU CAN'T FIND	MORE INFORMATION
<b>School spending</b>	<ul style="list-style-type: none"> <li>Each school's "local account" will tell you how donated nongovernment money is budgeted and spent.</li> <li>Schools also have larger taxpayer-funded budgets and this year the public will have greater access to what is designated for teachers, supplies and other school needs, as well as how the money was spent.</li> </ul>	<ul style="list-style-type: none"> <li>A specific salary for an individual teacher or staff member.</li> </ul>	Contact the school principal for details about budgets and spending.
<b>Discipline</b>	<ul style="list-style-type: none"> <li>Statistics on student discipline violations for each school, including violations for serious crimes, smoking, truancy and dress code.</li> </ul>	<ul style="list-style-type: none"> <li>Teacher and staff discipline reports or evaluations</li> </ul>	Fact-filled school reports at <a href="http://arch.k12.hi.us/school/ssir/default.html">arch.k12.hi.us/school/ssir/default.html</a>

### ENVIRONMENT

TOPIC	YOU CAN FIND	MORE INFORMATION
<b>Drinking water</b>	<ul style="list-style-type: none"> <li>The levels of federally regulated contaminants found in the drinking water in your home, the wells they came from and the levels of any virus and bacteria.</li> </ul>	You can learn about your tap water at the Honolulu Board of Water Supply at <a href="http://www.hbws.org/css/web/display.cfm?sid=1060">www.hbws.org/css/web/display.cfm?sid=1060</a>
<b>Pollution</b>	<ul style="list-style-type: none"> <li>The EPA annually issues a toxics release reporting inventory that shows you what potentially hazardous chemicals businesses use in the course of a normal day.</li> <li>Enforcement and compliance histories for businesses in your community, which includes major inspections, who inspected them and if they were cited for wrongdoing.</li> </ul>	Find the U.S. Environmental Protection Agency at <a href="http://www.epa.gov/">www.epa.gov/</a>
<b>Beaches</b>	<ul style="list-style-type: none"> <li>Warnings and advisories for beaches affected by sewage spills and brown-water runoff, including high levels of harmful bacteria in the water.</li> </ul>	Learn more about brown-water runoff and sewage spills in your area at <a href="http://emdweb.doh.hawaii.gov/CleanWaterBranch/Postings/default.asp">emdweb.doh.hawaii.gov/CleanWaterBranch/Postings/default.asp</a>

## Hawaii Reporter Kailua

<http://www.hawaiireporter.com/story.aspx?c8b87ac7-d32f-4629-85c3-03046e3d233c>

## Hawaii Government Agencies Compliance With Open Records Law is Dismal

*10 Media Organizations that Requested Records Access Found Pattern of*

## *Defensiveness and Reluctance*

By Society of Professional Journalists, 3/16/2006 9:48:35 PM

Ten community organizations this week released the first Freedom of Information Audit of Hawaii government records.

Thirty-three volunteers – mostly from the League of Women Voters – fanned out in February across the state to request records that are unquestionably public records and should be released to a requestor upon request.

What they found was a pattern of defensiveness and reluctance.

Compliance was pretty good as 43 of 59 record requests were met. But it took persistence by the volunteers. Only 17 of the 59 record requests were fulfilled on the first visit.

We wanted to make two points:

- Private citizens should not be required to come back when they are asking for public records. There is little excuse for not releasing records on the spot. Chances are that many will not return because of time or other constraints.
- Government agencies should stop asking why people want to see records and should refrain from requiring identification from those seeking records.

## **Report on Results of the 2006 Freedom of Information Compliance Audit**

Since 1998, Society of Professional Journalists chapters have conducted FOI Audits in over 25 states around the country. These FOI audits assess the degree to which state and local governments comply with open records laws, and help promote public awareness of freedom of information issues. (<http://foi.missouri.edu/openrecseries/>).

Last month, the first FOI Audit was conducted in Hawai'i. Ten organizations sponsored the Hawai'i FOI Audit, including the Society of Professional Journalists–Hawai'i Chapter, League of Women Voters of Hawai'i, Right to Know Committee, Honolulu Community-Media Council, Big Island Press Club, Kauaians for Open Government, Hawai'i Pro-Democracy Initiative, Citizen Voice, SPJ University of Hawai'i Chapter, and Open Government Coalition of Hawai'i.

Co-chairs of the 2006 Hawai'i FOI Audit are Beverly Kever, Right to Know Committee chair, and Stirling Morita, SPJ Hawai'i FOI chair. The FOI Audit was scheduled to coincide with national Sunshine Week and the Annual FOI Day Luncheon. Public awareness about the audit is also intended to build support for open government bills at the Legislature.

Instead of having journalists make FOI records requests like most mainland FOI Audits, the Hawai'i audit utilized citizen volunteers to avoid having agencies give journalists favorable treatment. The League of Women Voters helped recruit volunteers to submit FOI record requests. There were 33 volunteers; 14 on Oahu and 19 on the neighbor islands. FOI record requests were submitted by audit volunteers over 9 business days, starting on February 7.

## **The Results**

A total of 59 record requests were submitted in this audit; 43 requests were fulfilled and 16 not fulfilled. Two of those unfulfilled requests were granted viewing only, but requests to copy those

same records were denied. Of 43 requests fulfilled, 17 were fulfilled on first contact with the agency, 11 on the second, and 15 on three or more contacts.

Record requests were made to 25 state agencies and 34 county agencies. County record requests included 13 on Kaua'i, 8 on O'ahu, 5 on Maui, and 8 on Hawai'i, with 6 in Hilo and 2 in Kona. The 16 unfulfilled requests included 4 at state agencies and 12 at county agencies.

The records selected for this audit were suggested by the Society of Professional Journalists—Hawai'i Chapter. The types of open government records included: travel expenses, personnel lists, non-bid contracts, consultant contracts, office space and land leases, legal settlements, legal services, criminal information, and restaurant inspection reports.

## **Why Do You Want to See the Records?**

One third of the FOI requests in the audit — 19 record requests — involved volunteers being asked why they wanted the record. When this question is posed, it could have a chilling effect on citizens making FOI requests, even if asked in friendly conversation. If an agency required the information before releasing a record, the question would be improper. Among record types, agency personnel records had the highest rate of staff asking requesters both their purpose and identity, 7 out of the 8 requests.

Providing one's identity can often make it easier to implement a records request, as was likely in most of the 39 times agencies asked requesters in this audit. But agencies should also respect the rights of citizens who may wish to maintain anonymity in FOI requests. Exercising citizen access rights to government records should not be hindered by any requirements, implied or otherwise, not required by law.

## **It Takes Persistence**

In the audit, 17 record requests were fulfilled on the first contact with the agency. However, 35 or 60% of all FOI requests required one or more follow-up contacts to pursue release of public documents. Among the 59 record requests attempted, there were 25 instances in which volunteers were unable to submit their request on the first contact. In 32 of the requests, front desk agency staff were not able to handle FOI requests without the assistance or approval of their supervisor.

In analyzing results of this first Hawai'i FOI Audit, it should be noted that audit volunteers were trained and may have been more persistent in pursuing records requests than ordinary citizens. Also, project staff provided advice and assistance to volunteers that would not normally be available to citizens. In 49 of the 59 requests for records, audit volunteers visited the government agencies in person, at least on their first contact with the agency.

Mahalo to the following members of the League of Women Voters who helped recruit volunteers on their island: Joshua Cooper, Maui; Sue Irvine, Big Island; Carol Bain, Kaua'i; and Jean Aoki on O'ahu. FOI Audit sponsors also wish to thank Senator Les Ihara, Jr. and his staff for their invaluable support of this project.

## **Government Records in 2006 Hawai'i FOI Audit**

- Travel expenses for the governor, senate president, house speaker, chief justice, two mayors, and all county council chairs
- Personnel lists for offices in five state agencies, a county agency, as well as salary levels for house and senate permanent staff
- Non-bid contracts issued recently by state and all county governments

- Consultant contracts for three state agencies
- Leases of office space and land by the state and counties of Honolulu, Kaua'i, and Hawai'i
- Legal settlements for two state departments and two counties
- Legal services for private attorneys contracted by the state and the counties of Honolulu, Kaua'i, and Hawai'i
- Criminal information, including arrest logs for all counties, and sex offender registration data for two neighbor island counties
- Restaurant inspection records from the state Department of Health offices on three islands
- County building permits for properties on O'ahu and Kaua'i
- Meeting minutes from all county councils, a state board, and two county boards

**Sponsors of the audit:** Society of Professional Journalists–Hawai'i Chapter, League of Women Voters of Hawai'i, Right to Know Committee, Honolulu Community-Media Council, Big Island Press Club, Kauaians for Open Government, Hawai'i Pro-Democracy Initiative, Citizen Voice, SPJ University of Hawai'i Chapter, and Open Government Coalition of Hawai'i.

### **SAMPLING OF FOI AUDIT REQUESTS**

- Requester was asked to fill out OIP form to receive governor's travel expenses because it was the state's rules. Requester was told it was office procedure to sign name in a log to before seeing senate president's travel expenses.
- House speaker's travel expenses contained his un-redacted social security number.
- Staff repeatedly asked requester to submit written request stating who requester worked for and why she wanted the list of legal services contracts. Requester was asked several times for name and purpose of wanting personnel list; without asking requester's email capability, staff told requester to make request by email.
- Agency staff instructed requester to go to Office of Information Practices for list of state-contracted private attorneys; requester repeated original FOI request and another staff person instructed requester fill out OIP form; on another day, requester was offered copy of records for \$5.30 fee or to get information online.
- Requester used alias on OIP form requesting a copy of a restaurant inspection; staff said name was required but requester declined to provide; staff said deputy AG opinion will be sought and refused to identify himself to requester, saying he would not give his name since requester also refused; subsequently supervisor accommodated the request.
- County attorney solicited OIP opinion on redacting signatures on legal settlements, indicating that OIP said signatures may not be redacted prior to disclosure; county attorney asked requester to voluntarily redact signatures before posting on internet.
- Honolulu police arrest log available on counter and copies provided at 25¢ per page; Kaua'i police allowed review of arrest log and copies at 50¢ per page, plus search charge, but Maui and Hawai'i police declined requests for hardcopy arrest logs though reviewed by requesters.
- Two requests for identical building permit made to same Kaua'i agency; one request received no response, while other was fulfilled after three attempts and testy exchange with staff over privacy issue.
- From a book, staff read information on Maui mayor trip to requester, but declined to provide copy of requested travel expenses.
- Requester twice was asked her name and reason for requesting information on Honolulu mayor trip; reason was given but no response received after another follow-up. Requester asked twice to narrow request for Honolulu non-bid contracts; referred to another staff and left two messages but no return calls received. UH requires written request for legal settlements; two written requests faxed to UH counsel general office but no response has been received.

- Request not fulfilled because staff said there were no Maui non-bid contracts in last six months, only single source purchases. Requester told that Hawai'i county land leases are conveyance documents and are available on Oahu, not on Big Island.
- After 5 agency contacts, request was refused by county agency claiming requester owed \$2,000 for previous access fees disputed in pending lawsuit.
- Hawai'i corporation counsel provided names of two private-contract county attorneys as requested and informed requester that requests to individual departments would be needed to get names of other private county attorneys.
- Phone request made for Honolulu legal settlements with staff asking for requester's name; on phone follow-up a week later requester told that a written request was required.
- Land leases requested; staff provides tenant contact list but requester says she wants land leases; same request is resubmitted, but staff says the request was fulfilled.
- Staff declined request for DOE Kona office personnel list; staff asked why requester wanted the information and requester declined to give reason; staff said she didn't want requester to know her name; requester asked staff to give supervisor a note; as requester leaves office parking lot, another woman office worker chased requester's car shouting "you sure aren't getting my name either; just remember that".

## California

### San Diego Union Tribune

<http://www.signonsandiego.com/news/metro/20060313-9999-1m13letsunin.html>

## Getting public records from cities sometimes takes time and money

**By Alex Roth**

UNION-TRIBUNE STAFF WRITER

San Diego County has 18 cities, each with its own maze of bureaucracy that can be difficult to navigate.

But when it comes to turning over public records to *The San Diego Union-Tribune*, these cities can be fairly responsive if prodded and pestered long and hard enough.

In February, in an effort to determine whether San Diego County's 18 cities were willing to open their records to public scrutiny, the *Union-Tribune* asked each city to turn over several specific documents: the city manager's 2005 calendar, the city manager's 2005 credit-card receipts and expenses, and an electronic database of all the checks the city issued in 2005.

A similar request was made of the county's government. For the most part, the newspaper got what it asked for.

Some cities took longer than others. Some cities grumbled and groaned more than others. Some cities charged fees to cover the cost of compiling the information, while others turned over the documents free of charge. A few cities had technical difficulties assembling the information or putting the check data into electronic form.

Still, as of Friday, only National City had failed to give the *Union-Tribune* a complete set of the documents. City officials provided the calendar and check register but not the city manager's credit-card receipts or expenses. They said they intend to turn over those

documents but need more time. According to state law, a public agency must respond to a public records request within 10 business days.

The paper undertook the project in recognition of Sunshine Week, a national initiative spearheaded by the American Society of Newspaper Editors “to open a dialogue about the importance of open government and freedom of information.”

This year's Sunshine Week, which runs March 12-18, comes at a time when state law is unclear about which government documents should be made available to the public.

Until 2004, many of California's elected officials refused to make their calendars public, citing a 1991 state Supreme Court decision siding with then-Gov. George Deukmejian, who refused to give his calendar to the press.

In 2004, voters overwhelmingly approved Proposition 59, which was meant to give the public easier access to government meetings and records. Many proponents of open government argue that Proposition 59 overrides the 1991 court ruling.

James Ewert, general counsel for the California Newspaper Publishers Association, said an elected official's calendar is almost certainly a public document under the new proposition.

“There's no reason why it would not be,” Ewert said.

No state appeals court has interpreted the statute yet, and at least some cities argue that a public official's calendar can be kept from public view if revealing the information would affect the official's ability to do his job.

“Until a case comes out telling me different, the Supreme Court is who I listen to,” said El Cajon lawyer James Lough, who represents the cities of Lemon Grove and Imperial Beach.

Nonetheless, at Lough's recommendation, both cities released their city managers' calendars to the *Union-Tribune*.

“There are very few records worth litigating over,” Lough said.

All 18 cities turned over the city managers' calendars. La Mesa keeps such records for only six months and Escondido for only three months, so those cities turned over calendars that covered only part of the year.

Several cities, including Lemon Grove, Vista and Chula Vista, charged nothing for the information, while some other cities charged a minimal fee. Santee billed the newspaper \$13.70, while La Mesa billed \$25.50. Other cities charged a bit more. Del Mar charged \$70.95. San Marcos billed \$107.80. Coronado charged \$120.

Some cities were friendly and helpful, others less so. Poway officials dug in their heels when asked repeatedly to provide the check registry in a computerized format, complaining that satisfying the request would take too much work. They turned over the check records in paper format instead.

Imperial Beach initially couldn't figure out how to provide a computerized version of the check information, but officials eventually completed the task.

Some cities turned over the information while also responding that they weren't necessarily required by law to do so. Chula Vista provided its check registry, but Assistant City Attorney Bart Miesfeld also sent the newspaper a letter stating that the request "may invade the right to privacy and the official information privilege and such information would be exempt from disclosure."

Several cities made it clear they weren't happy with the newspaper's various requests. San Marcos City Clerk Susie Vasquez said the extra work was preventing her from fulfilling the public-records requests of other citizens.

"They're real people with real requests," Vasquez said.

Ewert, the lawyer for the California Newspaper Publishers Association, said it's vital that newspapers have access to this type of information. Scrutinizing these documents, he said, is the best way "for the public to hold its officials accountable."

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## **Sacramento Bee**

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

### **Bush's secrecy push is excessive, critics say**

**By David Westphal -- Bee Washington Bureau Chief**

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

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

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

"It just seems like a complete overreaction," said Burr, a senior analyst for the National Security Archive. Burr said it was understandable that the government would clamp down a bit after the 2001 terrorist attacks, but he added, "Some of this

makes little sense because the documents are already in the public domain. It's too late."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Aftergood, who writes a secrecy newsletter for the Federation of American Scientists, said some of the administration's confidentiality initiatives are a legitimate result of the Sept. 11 terror attacks. But he said the White House's anti-openness bent goes well beyond that, and started when Bush and Vice President Dick Cheney came to office.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Fremont Argus**

[http://insidebayarea.com/argus/localnews/ci\\_3603766](http://insidebayarea.com/argus/localnews/ci_3603766)

## **Survey cites state government secrecy**

Group finds dismal compliance with public record requirements

By Steve Geissinger

SACRAMENTO — An investigation a decade ago revealed state government operates largely in secret — a danger that an audit Tuesday showed has worsened in the post-Sept. 11 era, despite some lawmakers' attempts during the years to reverse the trend.

An open-government advocacy group announced Tuesday that its audit found dismal compliance with the California Public Records Act, which is intended to ensure speedy public access to government documents.

A similarly exhaustive probe by a news organization about 10 years ago revealed nearly the same findings.

Californians Aware, a nonprofit group that promotes government disclosure and the First Amendment, conducted a recent survey of 31 state agencies and found public records violations at each one, ranging from illegally charging for copies to taking too long to release basic public information.

Eighteen of the agencies visited by

Californians Aware had so many violations they earned a failing grade, according to the watchdog group.

"It's appalling," said Terry Francke, general counsel for the organization. "This is worse than anything we've seen at the local level."

The audit used the state Public Records Act and the Political Reform Act, which requires the disclosure of economic interests, to seek basic public documents, including salary information and litigation settlements.

Nearly half of the agencies were not able to provide the requested information, according to the group.

The Department of Consumer Affairs had the most violations, the audit found. Also singled out for serious violations were the Department of Motor Vehicles, the Department of Social Services and the Department of Justice.

The Consumer Affairs Department did not immediately return a call seeking comment.

College student Ryan McKee, 18, the son of Californians Aware President Richard McKee, requested the documents in January and February and recorded whether the agencies were properly posting access guidelines and following other requirements.

More than two-thirds of the agencies improperly asked to see McKee's identification before allowing him to see economic interest disclosure forms.

The group is now proposing legislation that would require state agencies to post key public documents on Web sites and would impose fines for willfully violating the law, Francke said.

The audit findings mirror complaints against federal agencies and reflect activists' concerns about the U.S. government in the wake of terrorist attacks and resulting federal legislation.

The organization's report comes nearly a decade after an extensive investigation into government secrecy by The Associated Press.

AP asked 29 state agencies for copies of 69 sets of documents, through the Public Records Act. Of the 29, only seven — about a fourth — said they could supply every requested record, either in electronic form or on paper.

About half of the surveyed agencies met the 10-day deadline under the records act for some kind of response.

But many of the responses simply said their agencies needed more time to consider the requests or said that the request had been too vague.

Complaints of vagueness were countered by explaining to agencies that AP had used the agencies' own descriptions of the records they maintain.

Contact Sacramento bureau chief Steve Geissinger at [sgeissinger@angnewspapers.com](mailto:sgeissinger@angnewspapers.com).

## **San Leandro Times**

[http://www.ebpublishing.com/\\*ws4d-db-query-Show.ws4d?\\*ws4d-db-query-Show\\*\\*\\*DAI-BEA-188188192194196190-1446\\*\\*\\*-Database\\*\\*\\*-\\*\\*\\*sltimes\(directory\)\\*\\*\\*.ws4d?sltimes/story\\_records1\(W\).html](http://www.ebpublishing.com/*ws4d-db-query-Show.ws4d?*ws4d-db-query-Show***DAI-BEA-188188192194196190-1446***-Database***-***sltimes(directory)***.ws4d?sltimes/story_records1(W).html)

## **Sunshine Forum Sheds Light on Open Government**

By : Linda Sandsmark

The timely topic of open government was presented by some high-powered individuals last week at a forum in San Lorenzo, hosted by the League of Women Voters (LWV) of Alameda County.

California Attorney General Bill Lockyer, Alameda County Counsel Richard Winnie, Berkeley City Attorney Manuela Albuquerque and representatives of several 'watchdog agencies' were among the speakers. The five-hour event was held at the Village Homes Association building on March 17.

The "Sunshine Forum," so-called because it sheds light on government activities, reminded the audience that public records are available not just to the press, but to each and every citizen.

"The answer lies with you out there," said investigative reporter Thomas Peele of the Contra Costa Times. "Your rights are only as important as you make them. We in the press have no more access than anyone else — you just may have to be a pain in the rear end to use those rights. I urge all of you to employ the California Public Records Act and not take 'no' for an answer."

The forum focused on the balance between important competing interests — privacy rights versus public disclosure. Aspects of the Brown Act, which pertains to openness in local governmental meetings, and the California Public Records Act (CPRA) were looked at from a citizens' perspective.

Bonnie Hamlin of the Oakland LWV introduced the event by stating that such laws are under challenge today.

"At a time when government is becoming more secretive, it is only as good as we the people

demand it must be," said Hamlin.

Keynote speaker Bill Lockyer pointed out that for thousands of years in western civilization, information and learning were controlled by a small number of people. These were usually members of the church hierarchy, along with some people in government. With the advent of the printing press, this monopoly on information was fractured.

"I think the reason we got the Bill of Rights was to protect the printing press," said Lockyer, adding that he feels the First Amendment (protecting freedom of the press, assembly, religion, and so on) is "sacred." He also expressed a general anxiety that many people feel about concentration of the media.

"Those who control the 'pipes,' such as cable TV and the Internet and other media, want to control the content. The money is in the content, not in the pipes," says Lockyer. "We see fewer and fewer voices even as we see a proliferation of TV channels."

Lockyer pointed out that pressure from citizens has increased availability of formerly hard-to-get information. He cited 'Megan's Law' as an example. Not long ago, citizens who wanted to check for sex offenders in their neighborhood had to visit a police station for this information. Now it is available online, 24 hours a day.

On the other hand, some requests are unreasonable. Berkeley's Attorney Albuquerque recalled a dog food manufacturer who wanted the names and addresses of all the dog owners in town, to use as a sales tool. That request was denied.

There are many gray areas as well. The California Supreme Court will likely hear several lawsuits on these issues in the near future. They involve release of information on governmental bidding contracts, employment information and salaries of individual public employees, and details on the discipline of law enforcement personnel. The court will have to rule on whether these items are excluded from current 'transparency in government' laws.

County Counsel Winnie pointed out that public law is dynamic.

"Openness is a public right. It varies with the public willingness to demand that right," he said.

Attorney Terry Francke, who founded a center for public forum rights in 2004 called Californians Aware, provided a list of "Top 10 Points to Remember" when making a request under the California Public Records Act. These include the following:

Public agencies have the burden of justifying denials by citing the applicable law. Requests need not be in writing, and the requester may remain anonymous except in certain instances (for example, when requesting crime information.) The purpose of the request need not be stated, though the scope of the request must be reasonably clear. The law provides that citizens may "inspect" or obtain a copy of records, not demand creation of reports in response to questions. However, if an agency agrees to create such a report, it may charge if the report can't be produced or constructed without special programming.

Public agencies may charge for photocopies and must provide prompt access when records are clearly public. A 10-day delay mentioned in the Act does not pertain in the case of public records, and is only allowed to resolve good faith doubts as to whether a record is public information. Finally, journalists have the same rights of access as other people, no more and no less. The full list, as well as similar lists on the Brown Act, censorship, and exemptions to the acts may be found at [www.calaware.org/programs/workshops.jsp](http://www.calaware.org/programs/workshops.jsp).

"What I find to be the single most problem in non-compliance is training," said Dan Purnell, Executive Director of the Oakland Public Ethics Commission. Purnell recommends quarterly training so line staff do not reject legitimate requests nor release private information.

"Cities should think of information from the point of view of citizens," Purnell added. He recommends having a directory of frequently requested documents, to save time for both city staff and residents.

"The hardest thing for citizens is just finding out where to go for information," said Berkeley City Clerk Sara Cox. "Government is so broadspread it's hard for even people who have been there a while to know."

*For more information, see [www.cacities.org](http://www.cacities.org) regarding the Brown Act, <http://ag.ca.gov/publications/#opengovernment> for guidelines from the Attorney General's office, [www.sunshineweek.org](http://www.sunshineweek.org) or e-mail [lvvsun@comcast.net](mailto:lvvsun@comcast.net) for Sunshine Week details.*

## **Vallejo Times Herald**

[http://www.timesheraldonline.com/todaysnews/ci\\_3612608](http://www.timesheraldonline.com/todaysnews/ci_3612608)

### **Benicia hosts open government forum on Saturday**

By GREG MOBERLY, Times-Herald staff writer  
Vallejo Times Herald

BENICIA - Real or perceived slights of citizens seeking public documents from city hall seems to be fading to memory as Benicia prepares to host an educational open government forum on Saturday.

Already eight months into the city's new "sunshine," or open government, ordinance, city leaders and advocates are largely satisfied.

Councilwoman Elizabeth Patterson and former Councilman Tom Campbell on Thursday received the James Madison Freedom of Information Award from the Northern California chapter of the Society of Professional Journalists. Both city leaders successfully pushed the city's passage of an open government ordinance after about a year and a half of work on the initiative.

"I don't think there's been any fatal problems with the ordinance," said John Woods, who chairs the city's sunshine ordinance oversight commission. Woods is one of several who will participate in Saturday's League of Women Voters forums.

"It's not going to go away," Woods said of the ordinance. The need for citizen access to public documents always will exist, he said. "All government agencies have a tendency not to want to give things away."

State Attorney General Bill Lockyer and City Attorney Heather Mc Laughlin are expected to speak at Saturday afternoon's forum and in some cases hold separate discussions about what citizens should expect from their government.

In Benicia, residents should expect six days' notice of regularly scheduled meetings and what will be discussed at the meeting. In addition they are entitled to immediate disclosure of requested agenda material within the past year. Also in the ordinance is a requirement that all city committee meetings be taped and the recordings be kept for two to four years.

There already has been some tweaking of the ordinance. The starting time of Benicia City Council meetings has changed and public comment is not required unless it is on agenda items.

"I knew there needed to be changes," said Belinda Smith, an open government advocate and co-director of Saturday's event. "So far, I'm OK with the changes they've made."

Patterson is not. She voted against the changes and says the impression is that the "primary focus is to change the ordinance."

Council members hadn't even waited a year before changing the city law, Patterson said.

The councilwoman also is critical that the panel has not conducted any outreach or citizen training.

"They've missed an opportunity to engage the public," Patterson said of the oversight panel.

Smith doesn't expect Saturday's forum to miss any opportunities.

"I think it's exciting and a real opportunity to see how our government works," Smith said.

Smith said, "It's important for people to learn you have a right to view public documents."

San Francisco, Oakland and Vallejo also have open government laws.

- E-mail Greg Moberly at [GMoberly@thnewsnet.com](mailto:GMoberly@thnewsnet.com) or call 553-6833.

If you go...

What: League of Women Voters Openness in Government Forum

When: 1 to 5 p.m. Saturday, March 18

Where: Benicia City Council chambers, 250 East L St.

Key speakers or discussion leaders: California Attorney General Bill Lockyer; Assemblywoman Lois Wolk, D-Davis; Executive Director of California First

Amendment Coalition Peter Scheer; Editor of The Reporter Diane Barney; Executive Editor/Vice President of News at Contra Costa Times Chris Lopez; KTVU Channel 2 reporter Claudine Wong.

## **Whittier Daily News**

[http://www.whittierdailynews.com/opinions/ci\\_3598857](http://www.whittierdailynews.com/opinions/ci_3598857)

# **Push for public rights**

San Gabriel Valley Tribune

ET the sun shine in. You may think this is a plea for intermittent showers to cease. You'd be wrong. The next four days are part of Sunshine Week, designed to cut through the fog that increasingly passes for representative government these days.

Begun as a one-day observance by Florida's newspapers in 2002, Sunshine Sunday has grown into a seven-day project supported by most U.S. newspapers and the American Society of Newspaper Editors.

But the stonewalling and outright denial of public access is everybody's business because, too often, the ones making decisions for the rest of us do so behind closed doors without public knowledge or deliberation.

Such secrecy is certainly worrisome in our nation's capital, where attempts to streamline requests have been stymied as outlined in our front-page story yesterday.

Certainly the United States is playing much security information close to the vest these days. The brouhaha over the National Security Agency wiretapping stands as testament.

However, the situation is no better at the state level even with the addition of the California Public Records Act and 2004's Sunshine Amendment.

Californians Aware, an organization that works for open government, is scheduled to release results today of a recent audit of state agencies' compliance with the Freedom of Information Act.

Not surprising but certainly disheartening, is that of 31 state agencies surveyed, more than half failed to comply with the law at all. Compliance for the remainder was less than stellar as well, particularly when it came to reporting salaries of top officials and their financial interests, intended to uncover conflicts.

Just as often, information - public information - is denied by local governing agencies from school districts to the county to cities.

Shut out of meetings and denied access to transcripts and other pertinent information surrounding official acts, the public is kept right where officials want them - in the dark.

Sure, democracy isn't as efficient as say despotism, but it is designed to include the governed. More than necessary, local agencies shut the public out to gain that efficiency lost in the laborious process of public hearings, public meetings and public votes. Likely nothing is amiss. We believe most of our elected officials are there out of a desire to give back to the community, but closed-door meetings and denial of public records only cause skepticism to grow, feeding on rumor and speculation.

However, public agencies have proved again and again that they do not care about the public's right to know, perhaps because there is no retribution for flouting the law. The information act and its companions in the state carry no penalties for transgressors. State lawmakers regularly pen revisions to our information laws ostensibly to make them stronger. But there are enough rules and regulations in place as is.

It's the unwritten law that's the problem. That one telegraphs: Do what you want and the public be damned.

Until penalties for lawbreakers are in place, elected officials and agency administrators will continue to thumb their noses at the public and its right to know.

Let's see that legislation, and let's see it before 2007's Sunshine Week rolls around.

## **Lake County Record Bee**

<http://www.record-bee.com/Stories/0,1413,255~26901~3268274,00.html>

### **'Bumps' in the road**

By John Lindblom - Record-Bee staff

LAKE COUNTY -- The state Department of Transportation (Caltrans) is monitoring two trouble spots on Lake County highways to ensure they do not create problems for motorists.

One of the spots is an indentation in the pavement at mile marker one on the Lake County portion of Highway 175, the Hopland Grade. The spot is technically referred as a "sink" and has been an ongoing problem, according to Ann Marie Jones, Caltrans public information officer.

"It hasn't created any major problems and what we'll likely do is wait for the weather to get better and pave over it with asphalt," Jones said.

A moderate landslide on Highway 20 in Clearlake Oaks is also under Caltrans scrutiny. The slide, said Jones, was first noticed about a week ago.

"We classify it as a moderate landslide, but because of major slides in the area we are monitoring, watching and maintaining it 24-7," Jones added. "We have a truck dedicated to that area, keeping it free of debris."

Caltrans may do some scaling of banks in the area, a form of managed loosening and removal of debris that shows a threat of falling.

"That's being looked at," Jones said. "But sometimes as the weather gets better it kind of stabilizes itself. You need to wait and see what kind of direction Mother Nature wants to take."

A Record-Bee staffer was at the scene in Clearlake Oaks Wednesday morning to take pictures when another portion of the mountainside crumbled away, covering part of the highway.

## **Contra Costa Times**

<http://www.contracostatimes.com/mld/cctimes/news/opinion/13966715.htm>

### **TIMES WATCHDOG**

## **Those charged with public access will often hinder it**

WHEN VOTERS passed Prop. 59 in 2004 and made access to government records in California a right guaranteed in the state constitution, one might think it became easier to get government records in California.

In theory, that's what happened. The reality is that there are many access battles left to fight, most of them daily.

That's because what the public records act requires often remains a mystery to the very people charged with protecting the public's right to access. Two recent public records requests that the Times filed with the city of Oakland and the University of California highlight the problems

In Oakland, where City Attorney John Russo is an acknowledged open government advocate, the Times requested a specific type, and limited number, of, documents on Jan. 26.

It was the type of basic request that newspaper reporters make routinely and that public agencies should be able to process with rote efficiency

As with all requests made under the California Public Records Act, Oakland had 10 business days to respond. The 10-day period is often abused. Most requests for records - such as the Times' can be easily complied with within that time. All it takes are government officials dedicated to openness and compliance with the law.

The bare legal minimum requirement is that officials respond in writing within 10 days of a request, detailing both the reasons needed for an extension of time to produce the records and an estimated date when the records will be available.

The state public records act specifically says the 10-day period can't be used "to delay the access for purposes of inspecting public records."

Oakland let more than 10 days pass without responding.

On the 16th business day after the request, the Times contacted Oakland again. Without asking for an extension of the 10-day period, Russo's staff member in charge of public records requests simply said the documents weren't ready for inspection.

She cited no need for an extension and there was no formal response in writing.

Finally, on the 19th day after the document request, the Times was told that some could be inspected. This is in a city whose attorney aggressively claims to be an advocate of records access.

Oakland isn't alone in the way it ignores what the law requires.

Times higher education reporter Matt Krupnick filed a public records request on Jan. 24 with the University of California. Krupnick waited as 10 business days ticked by. He heard nothing from the university.

On the 11th day, he contacted a university spokesman and received an e-mail response: "We have begun a search for records that are responsive to your request and we will make every effort to transmit the information to you as quickly as possible."

Nowhere in the e-mail did the spokesman cite an extension to the 10-day period as the law requires. The spokesman offered excuses for UC's inadequate response, writing to Krupnick that "each UC office has its own method for handling such requests."

There is only one method for "handling" a request made under the California Public Records Act.

California Government Code Section 6251 unambiguously spells it out.

Krupnick later got an e-mail from UC attorney Maria Shanle: "I apologize if, in the press of business, the university missed its statutory deadline."

She apologized, but didn't set a date to comply with the law, either.

California Government Code Section 6251. In Oakland and at UC, they ought to read it.

*Thomas Peele is a Times investigative reporter and the winner of numerous awards for reporting on freedom of information issues. The Watchdog appears monthly. He invites reader questions and comments on public records and government access issues. E-mail him at [watchdog@cctimes.com](mailto:watchdog@cctimes.com).*

## San Jose Mercury News

[http://www.mercurynews.com/mld/mercurynews/news/local/states/california/northern\\_california/14098226.htm](http://www.mercurynews.com/mld/mercurynews/news/local/states/california/northern_california/14098226.htm)

# Survey finds state agencies violate public records laws

Associated Press

**SAN FRANCISCO** - A survey of 31 state agencies found public records violations at each agency, ranging from illegally charging for copies to taking too long to release basic public information.

Eighteen of the agencies visited by Californians Aware, a nonprofit that promotes government disclosure and the First Amendment, had so many violations they earned a failing grade, the watchdog group said Tuesday.

"It's appalling. This is worse than anything we've seen at the local level," said Terry Francke, general counsel for the group.

The audit used the California Public Records Act mandating the speedy delivery of public records and the Political Reform Act, which requires the disclosure of economic interests, to seek basic public documents, including salary information and litigation settlements.

Nearly half of the agencies were not able to provide the requested information.

The Department of Consumer Affairs had the most violations, the audit found. Also singled out for serious violations were the Department of Motor Vehicles, the Department of Social Services, and the Department of Justice.

The Consumer Affairs Department did not immediately return a call seeking comment.

College student Ryan McKee, 18, the son of Californians Aware President Richard McKee, requested the documents in January and February and recorded whether the agencies were properly posting access guidelines and following other requirements.

More than two-thirds of the agencies improperly asked to see McKee's identification before allowing him to see economic interest disclosure forms.

The group is now proposing legislation that would require state agencies to post key public documents on Web sites and would impose fines for willfully violating the law, Francke said.

# OREGON

## **Salem Statesman Journal**

<http://159.54.226.83/apps/pbcs.dll/article?AID=/20060316/NEWS/603160334/1001>

### **Public records pry open stories**

#### **Rule is instrumental to paper's ability to dig up hidden news**

TRACY LOEW

Statesman Journal

March 16, 2006

Teachers using paid leave to skip school. Financial problems at The Oregon Garden. A sex scandal at Oregon's women's prison.

During the past year, the Statesman Journal has published stories about those issues and more, all based on information obtained through public-records requests.

The Oregon Public Records Law ensures that the public has the right to inspect the records of any public body in the state unless the record is specifically exempt from disclosure.

The newspaper has used that law to dig out stories that otherwise might have gone unreported. Many of those stories have prompted changes in state law or the way that public bodies conduct business:

Teacher absences: The newspaper used public records to report that Salem-Keizer teachers use more sick and emergency leave, on average, than their counterparts in Oregon and nationwide, and that a few teachers abuse provisions of the leave policy.

In response to public-records requests, the school district supplied the newspaper with the total days of leave taken by each of the district's 2,206 teachers, as well as the number of teachers absent each day of a portion of last school year. The district also provided documents detailing one egregious case of misusing leave.

Pardons and commutations. Reporter Alan Gustafson filed a public-records request with the governor's office to review clemency applications. The resulting story examined petitions rejected by the governor, as well as the seven applications he had quietly approved.

Financial problems at The Oregon Garden. Reporter Michael Rose wrote about Marion County's attempt to restructure The Oregon Garden's \$5 million bond debt. He used a letter sent to Marion County commissioners alleging that their plan violated county rules.

Marion County legal counsel Jo Stonecipher initially had refused to release the letter. Stonecipher turned over the letter after the Statesman Journal indicated that it would appeal that decision legally.

A sex scandal at Oregon's women's prison. Gustafson obtained investigative reports from the Oregon State Police. They showed that when a 20-year-old inmate began to talk about her affair with a command-level officer, two male prison officials quickly concluded that her allegations were bogus.

However, a female prison counselor believed the frightened inmate and encouraged her to document everything in writing. Damning evidence, including DNA-testing results, later emerged during a state police criminal investigation into sexual wrongdoing at the prison.

Gustafson's story retraced the scandal, which culminated in criminal charges against two prison employees and a \$350,000 state settlement with the inmate.

A controversial settlement agreement: The newspaper used public-records requests to obtain documents detailing a secret settlement between the Willamette Education Service District and an administrator accused of misconduct. As part of the agreement, WESD Superintendent Maureen Casey agreed to allow the employee, Nicolasa Mohs, to resign, then hired her back as a consultant at her former salary. Casey also agreed not to report Mohs to the Teacher Standards and Practices Commission or the Government Standards and Practices Commission. Both of those agencies now are conducting investigations into Mohs' alleged misconduct.

School district officials' handling of sex-abuse complaints: The newspaper obtained documents from the Salem-Keizer School District showing that the district had received complaints about former Houck Middle School band director Joe Billera as long as four years before his October 2004 arrest. Billera pleaded guilty to sexually abusing four students.

The stories prompted legislators to pass a law opening the employment records of teachers who have been convicted of certain crimes. Meanwhile, Superintendent Kay Baker has led a community effort to educate parents and people who work with young people about child sexual abuse.

PERS benefits: Reporter Steve Law wanted to know how PERS benefits to public employees retiring in 2004, after the 2003 reforms took place, compared with their salaries.

Law's request for that analysis initially was rebuffed by state officials, who said they didn't do those calculations anymore. Law requested raw data to do his own calculations but discovered that much of the data was missing.

PERS later came out with its own data, which Law said he found highly selective and spun in a way to minimize the incidence of pensions topping salaries.

Law brought up the void of usable data to the governor's chief of staff and the Department of Administrative Services director. Finally, PERS executive director Paul Cleary requested that a new study be done.

Law's resulting story showed that benefits indeed had dropped for 2004 retirees.

Affirmative action: Law wrote a story about the governor's improved record in affirmative action for appointments to state boards and commissions, using the application forms that people must file to serve on those commissions.

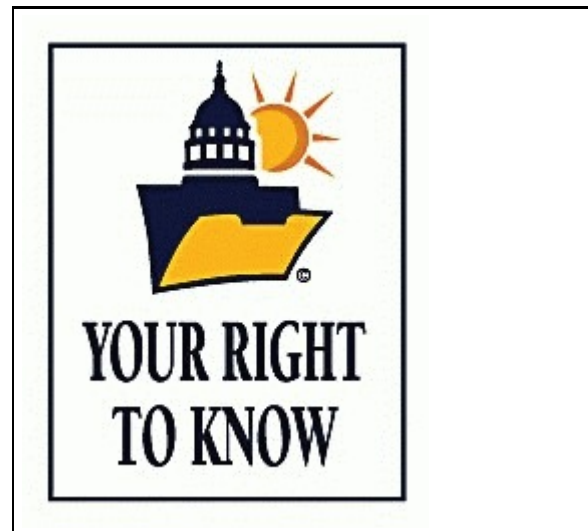
Reporters Michael Rose, Alan Gustafson and Steve Law contributed to this story.

*tlow@StatesmanJournal.com or (503) 399-6779*

## **Curry Coastal Pilot    Brookings**

[http://www.currypilot.com/news/story.cfm?story\\_no=12503](http://www.currypilot.com/news/story.cfm?story_no=12503)

## **GOVERNMENT AGENCIES RESPOND WELL IN PILOT'S PUBLIC RECORDS AUDIT**



By Peter Rice

Pilot staff writer

*Click this picture to view a larger image.*

An audit of public records request procedures at seven Curry County governments shows widespread and speedy compliance.

The Curry Coastal Pilot audited the Brookings-Harbor School District, the Curry County Sheriff's Department, the Curry County Commissioner's Office, the Harbor Sanitary District, the City of Brookings, the Port of Gold Beach and the Brookings Police Department, requesting copies of a diverse array of public documents. The Port of Brookings Harbor was not included in the audit, since the paper has repeatedly made public records requests there recently.

The audit coincided with Sunshine Week, an annual national observance meant to promote open government.

Under Oregon law, all documents generated by public agencies are open to public inspection, with some exceptions also elaborated in the law. All the agencies in last week's audit fall under Oregon law, but the federal government also maintains its own public records law, the Freedom of Information Act.

The paper sent auditor Jeff Frawley, who this week joined the news staff as a features reporter, to make the requests as a private citizen, on the theory that a member of the press might be treated differently. He made the initial requests on Thursday, March 16.

The cover didn't last long, however. The paper's reputation for public disclosure requests, apparently, precedes it.

But even before the governments involved figured out what the paper was up to, they proved very willing to comply with public disclosure laws.

Responding to a request for a copy of all e-mail messages he sent on Wednesday, March 15, Brookings City Manager Dale Shaddox called Frawley back within hours. He confirmed receipt and set up a time to pick up the records, which totaled four pages.

One county staffer even offered Frawley some cookies while she printed out requested Sheriff's Department financial data.

One agency, the Brookings Police Department, was helpful even though they didn't hold the requested information: driving under the influence of intoxicants arrest reports for February of this year.

The department referred Frawley to the Curry County District Attorney's Office, and a staffer even offered to give him directions and phone contact information. Frawley retrieved the records on Tuesday, after a brief game of phone tag with District Attorney Alexandria Streich.

Public officials report that the requests are not the norm, but not a problem either.

"The records are public, so go get 'em," said Curry County Sheriff Mark Metcalf. "That's why our salaries are published in the paper."

But in an example of documents that might be exempt from disclosure, Metcalf said he has recently received a request for copies of concealed weapons permits. He blocked access to those, citing an exemption in the law related to revealing security measures of individuals.

From the sheriff's department to the school district, there's little change when it comes to records requests.

"It's very rare," said Brookings-Harbor School District Superintendent Chris Nichols. The Pilot audit requested a copy of all e-mails that she had sent to school board members in the last two weeks. Frawley picked up the documents a few days later.

Like the ports of Brookings and Gold Beach, the district has a form that people requesting documents can fill out, easing the process along.

"I really didn't give it any thought," Nichols said of the unusual request. "Basically what we're taught is, if you don't want to read it in the paper, don't put it in print."

Agencies are allowed to charge reasonable fees for copying and staff time, and several did from last week's audit. In total, the paper spent about \$30 on the fees.

### **Documents requested by Pilot auditor**

#### **Brookings-Harbor School District**

Documents requested: Outgoing e-mails from Superintendent Chris Nichols to any member of the school board from March 1 to March 15.

Requested on: March 16.

Retrieved on: March 22.

#### **Harbor Sanitary District**

Documents requested: All 2005 invoices from SHN Engineering. (The company does frequent engineering work for the district, and played a key role in the recently completed pipeline project across the Chetco River.)

Requested on: March 16. Retrieved on: March 16 and March 22.

Notes: Complete records of 2005 invoices turned out to be a very thick stack of paper, so the auditor settled for one invoice. Later, district staff made copies of some additional invoice records, which were retrieved on March 22. The office charged a copying fee of 25 cents per page, which is standard at many agencies.

#### **Curry County Board of Commissioners**

Documents requested: All outgoing e-mail messages from Commissioners Ralph Brown, Lucie La Bonté and Marlyn Schafer for March 15.

Requested on: March 16. Retrieved on: March 21

Notes: To speed the transfer and ease the burden on county staff, the paper amended the request so as not to include the strings of past e-mails that often appear at the bottom of messages. Pursuant to Oregon law, the county redacted portions of the documents that contained information about a private medical matter.

The office charged a copying fee of 25 cents per page.

### **Curry County Sheriff's Department**

Documents requested: Department financial expenditures for January and February.

Requested on: March 16. Retrieved on: March 16.

Notes: Sheriff Mark Metcalf referred the auditor to the Curry County Finance Department, and a staffer there printed out the requested records.

### **Brookings Police Department/Curry County District Attorney**

Documents requested: Copies of all DUII arrest reports for February.

Requested on: March 16. Retrieved on: March 21.

Notes: The Brookings Police Department referred the auditor to the Curry County District Attorney's Office for the information. District Attorney Alexandria Streich, who has previously been called on to arbitrate disputes over public records, gave the auditor the documents on March 21.

### **City of Brookings**

Documents requested: All outgoing e-mails sent by City Manager Dale Shaddox on March 15.

Requested on: March 16. Retrieved on: March 21.

Notes: The office charged a copying fee of 25 cents per page.

### **Port of Gold Beach**

Documents requested: The lease agreements of Fishermen Direct Seafoods and the Port Hole Cafe.

Requested on: March 16. Retrieved on: March 21.

Notes: The office charged a copying fee of 25 cents per page.

## Washington

### Seattle Times

[http://seattletimes.nwsourc.com/html/localnews/2002860026\\_yourcourtsarmstrong12.html](http://seattletimes.nwsourc.com/html/localnews/2002860026_yourcourtsarmstrong12.html)

#### The top 5

These judges have sealed the most civil cases since 1990.



#### Your Courts, Their Secrets

## Penchant for secrecy: One judge has sealed 12 cases from view

By Ken Armstrong and Justin Mayo

*Seattle Times staff reporters*

The judge, speaking from the bench, told the baffled lawyer: "But for the unusual facts of this case, we wouldn't be doing this."

To the lawyer, Michael Killeen, the "this" was unheard of. Sharon Armstrong, a King County Superior Court judge, had sealed the entire case file in a lawsuit over a Metro bus accident. What's more, she had barred the public from her courtroom — in the middle of trial, after a newspaper reporter had stepped in to watch.

She was trying the case in private, deciding who was right and who was wrong, who would pay and how much — and all in a public courtroom, with a sign on the door saying "Closed."

Killeen didn't know it, but the sealing of files extended well beyond this case. A Seattle Times investigation has found hundreds of civil suits sealed improperly in King County since 1990 — lawsuits accusing doctors of negligence, lawyers of misconduct, public agencies of harmful mistakes. And no judge has sealed more cases than Armstrong.

In the Metro case, which went to trial in 1993, Killeen represented The Times, which wanted the courtroom and court file opened. He asked the judge why secrecy was needed.

Armstrong said she was protecting the plaintiff, a woman hit by a Metro bus in a crosswalk. Publication of her name and circumstances "would probably result in either her suicide or in people locating her and harming her," Armstrong said.

Killeen didn't understand. Who said the woman would commit suicide? And based on what? But Armstrong refused to give details. Doing so, she said, would cause "the very

Killeen told Armstrong he couldn't find a single precedent for a judge sealing an entire file. An occasional document, yes. But never the whole file.

Armstrong said: "It's not something I do lightly. I have never sealed a file — or sealed a file or closed a hearing before."

That wasn't true.

The year before, Armstrong had sealed the whole file in another case involving a motor-vehicle accident. That file contained "politically sensitive material," her sealing order said.

Four years before that, Armstrong had sealed a discrimination lawsuit against the Seattle Art Museum.

And in the years following the Metro lawsuit, Armstrong sealed more files yet. She has sealed at least a dozen cases since 1988 — the most of any judge in King County during that time, according to a Seattle Times analysis of available sealing orders.

To seal, a judge must find "compelling circumstances," a demanding legal standard. But in most cases Armstrong has found "good cause" — a lower threshold — or cited no standard at all. A judge must also spell out the need for secrecy. But Armstrong's sealing orders have offered little or no explanation.

What makes this all so puzzling is Armstrong's overall reputation for excellence. Lawyers and judges describe her by stacking adjectives of praise. "I think Sharon Armstrong is a superb judge," said Presiding Judge Michael Trickey. "She is thoughtful, intelligent, dedicated." Judge William Downing said: "She is bright, talented, industrious, entirely committed to the rule of law and attentive to all her duties."

She is entrusted with complex civil cases and oversees all of the court's asbestos litigation. She handles a docket so large that she sometimes hears motions on weekends. And she has served as chief of both the civil and criminal divisions.

So what explains all those sealed cases? Armstrong declined comment, saying it would be inappropriate to talk about cases that The Times may be filing motions to open. But one answer may be: When Armstrong was sealing entire cases, she wasn't being challenged. The parties went along, and the public didn't know.

The public didn't know about the two lawsuits she sealed in 1995. One accused a lawyer and his firm of bilking a wealthy client. That case settled for about \$1 million, and the lawyer's license was subsequently suspended. The other lawsuit was a business dispute, which Armstrong sealed to protect "the parties' competitive interests."

The public didn't know about the three lawsuits she sealed in 1997. One involved a pedophile priest, another a registered counselor, and the third featured one lawyer suing another.

In 2002, Armstrong sealed three more lawsuits. One accused a state employee of molesting juveniles at a youth lockup. Another accused a drug-lab director of secretly videotaping women providing urinalysis samples. The third accused a law firm of malpractice. Sealing it was "consistent with the parties' settlement agreement," Armstrong's order said.

And many other judges, including the court's most esteemed, were sealing entire files as well. Former Judge Robert Alsdorf, for example, sealed at least seven, including one against the state and another against a prominent attorney.

"I didn't like signing the sealing orders, but I did sign them," he said. "For those judges, including me, who sealed cases when there was an agreed order, it was a reasonable way to keep the cases moving."

(Alsdorf is now a partner at Davis Wright Tremaine, a law firm that represents The Times. He is not participating in any motions by the newspaper to unseal cases.)

Between 1988 and 2002, the only challenge Armstrong received for sealing a file was in the Metro case. She denied the newspaper's motion — and The Times didn't appeal.

It wasn't until 2004 that the newspaper would bring Armstrong's sealing practices before a higher court.

### **InfoSpace case**

In May 2003, Judge Armstrong signed an order finding merit to a shareholder lawsuit alleging insider trading and deceptive financial reporting by InfoSpace, a dot-com company once worth more on paper than Boeing.

At the time, corporate scandals were all over the news, from Enron to WorldCom, intensifying public interest in knowing what was going on inside company walls.

Armstrong had not allowed the entire InfoSpace file to be sealed — just big chunks of it, including crucial documents. She even took the extraordinary step of sealing one of her key rulings in the case.

The purpose of the May order was to say which parts of the lawsuit could go forward, and why. But her order was "virtually indecipherable," a Times lawyer wrote in an appellate brief. That's because Armstrong's order was based upon a sealed investigative report; sealed arguments discussing the sealed report; and her sealed ruling.

"A riddle wrapped in mystery inside an enigma," the Times' attorney called the order, quoting Winston Churchill.

A Times reporter, David Heath, had earlier written Armstrong, asking her to unseal the lawsuit's records. She advised him to file a formal motion. So the newspaper did — and Armstrong denied the motion.

Her reasoning: In these kinds of cases — shareholder derivative lawsuits — records get produced that wouldn't normally be disclosed, such as attorney-client communications. If those records were public, they might be used by InfoSpace stockholders who were suing company executives in a class-action lawsuit in federal court.

"She was acting on behalf of the company and not on behalf of the public," said Judith Endejan, a lawyer who argued the case for The Times.

This time, the newspaper appealed — a process that cost tens of thousands of dollars, just for one case.

In 2004, the Washington Supreme Court reversed Armstrong, 9-0. The landmark decision reinforced rules restricting court secrecy that had been in place since the early 1980s.

"Justice must be conducted openly to foster the public's understanding and trust in our judicial system and to give judges the check of public scrutiny," the court wrote. "Secrecy fosters mistrust."

The case was kicked back to Superior Court, and records were unsealed. The Times used those records, including hundreds of internal e-mails and other documents, to reveal to the public how InfoSpace had used accounting tricks and dubious deals to mislead investors.

### **Proposal defeated**

Since 1990, at least 420 civil cases have been sealed in their entirety in King County Superior Court, The Times has found. Nearly all were sealed improperly.

In December, when the newspaper alerted the court to its findings, the court's top administrative judges came up with a plan that would have opened many, if not most, of the files with minimal delay.

But other judges objected, voting 21-9 to make the newspaper file a motion to unseal in every case, a requirement that imposes extraordinary expense and delay.

The judge who made the motion to overturn the leadership's plan was Armstrong.

The judges in the majority cited a Washington Supreme Court rule that says that files may be unsealed only by agreement of the parties or upon motion. But this is the same

rule that says there must be compelling circumstances to seal records in the first place — a requirement judges have widely ignored.

Some judges have acknowledged error and have unsealed cases without a formal motion.

But Armstrong, in an e-mail reply to a constituent that was provided to The Times, said "court rules and ethical obligations" require a proper motion to unseal.

"The public is ill-served by judges who take legal action, in violation of court rules and established law, simply because of a threat of adverse publicity," she wrote last week.

"One of the hallmarks of a democracy is the independence of the judiciary."

## **SEATTLE POST-INTELLIGENCER**

[http://seattlepi.nwsourc.com/local/6420AP\\_WA\\_Sunshine\\_Week\\_Washington.html](http://seattlepi.nwsourc.com/local/6420AP_WA_Sunshine_Week_Washington.html)

### **Loopholes to public access in Washington have increased**

By RACHEL LA CORTE  
ASSOCIATED PRESS WRITER

OLYMPIA, Wash. -- In a state that prides itself on its public access laws, advocates for open government are increasingly concerned about the growing practice of slipping exemptions quietly into new laws, a practice that is gradually eroding the public's right to some records.

To date, there are at least 300 exemptions to Washington's sweeping public records law, which generally holds that records should be open. Off-limits records range from documents dealing with prevention or response to terrorism that would create "a substantial likelihood of threatening public safety" if released to personal information such as credit card numbers.

But then there are also proprietary exemptions, like one for ginseng enacted in 1996, that seem out of place.

The exemption was tucked into a bill with the innocuous title, "An act relating to the department of agriculture grants of rule-making authority."

The bill was adding a few items to the list of things the Washington State Department of Agriculture could regulate, like bulk milk tankers, but then another section added ginseng to what could be regulated, followed by the public records exemption for ginseng dealers.

"How does an exemption for ginseng end up in" state law? Republican Attorney General Rob McKenna asked. "That's how the act erodes over time, with narrowly crafted exemptions that escape notice because they're tucked into a larger bill."

Exemptions are scattered throughout the statutes, something that Rep. Toby Nixon, R-Kirkland, would like to see changed. Nixon introduced a bill this year that would have required all exemptions to be located in one place in the statutes. His proposal died in committee. Last year, Nixon successfully pushed through a bill reorganizing 60 public record disclosure statutes into a new chapter called the Public Records Act, with exemptions listed by subject.

But Nixon said that consolidating all of the exemptions in one place is an important goal, and one that he would continue to pursue.

"It makes it easier to find if there is one and it makes it easier to identify if someone is trying to create a new one," Nixon said.

Voters enacted the public records law with the overwhelming passage of Initiative 276 in 1972. The measure called for disclosure of campaign finances, lobbyist activity, financial affairs of elective officers and candidates, and access to public records. When it passed, there were only 10 exemptions to the public records section.

Since then, hundreds of exemptions have been introduced. Some have been introduced as separate bills, like one measure that failed last year that would have denied jail and state prison inmates access to all public records.

But most have been tucked into other bills.

"It's a normal legislative tactic, hide something in a big bill," said Michelle Earl-Hubbard, a media attorney and president of the Washington Coalition for Open Government. "The remedy they propose is always blanket denials - cut off access to an agency or record as opposed to figuring out how to deal with a specific problem they don't like."

For example, Gov. Chris Gregoire's Life Sciences Discovery Fund - which encourages medical and agricultural research in Washington state and became law last year - exempts grant application information on the basis that the research information could be obtained by competitors.

The down side of that is that the decisions about who gets the taxpayers' money will be made with little chance for the public to decide whether the recipients are worthy.

"It's the direct giving of government money in a closed setting," said Rowland Thompson, executive director of Allied Daily Newspapers, a trade organization for newspapers in the state. "That board will be acting on information the public can't see."

This year, in a bill that would allow out-of-state wineries and breweries to distribute directly to Washington stores, you'd have to read to page 33 to get to the exemption for financial or proprietary information supplied to the state Liquor Board, including the amount of beer and wine distributed to Washington retailers by domestic wineries,

breweries, and microbreweries. The bill passed the Legislature and awaits the governor's signature.

Thompson said it makes perfect sense for retailers to not want their information to get into competitors' hands. But he argues that the state shouldn't be collecting that information in the first place.

McKenna, who has made open government one of his top issues since taking office last year, said he would like to see lawmakers review the hundreds of exemptions to see if they are still needed.

"My philosophy about exemptions is they should be narrowly tailored to cases where there is another important public interest that would be compromised if public interest of disclosure was upheld," McKenna said. "Most exemptions that are proposed can be justified as protecting someone's interest. But lawmakers need to weigh that against the greater public's interest."

House Majority Leader Lynn Kessler, D-Hoquiam, said she would be supportive of any measure seeking to review the exemptions that are currently on the books.

"I err on the side of government being more open. After all, we're here to serve the public," she said.

At McKenna's request, Kessler sponsored a bill last year to prevent government agencies from denying public records requests that the agencies might feel are too broad.

The measure, which took effect last July, was a response to a 2004 state Supreme Court ruling that said government can ignore public records requests if they're too broad, and endorsed use of the attorney-client privilege as a tool for refusing public records requests. But the bill didn't deal with the attorney-client privilege problem, which is now viewed as a major loophole in public-records law.

Nixon introduced a bill this year that would have narrowed the scope of the attorney-client privilege to limit it to when there was active litigation or when litigation was expected. It died in committee. But Nixon said he'll continue fighting for that proposal and others to maintain open government.

"It's the preservation of our liberty. It's the preservation of our form of government," Nixon said. Lack of access to records eliminates "the ability to hold the government accountable. Then we don't have a democracy anymore."

## **Alaska**

### **Ketchikan SitNews**

[http://www.sitnews.us/0306news/030806/030806\\_shns\\_sunshinepoll.html](http://www.sitnews.us/0306news/030806/030806_shns_sunshinepoll.html)

## **Poll finds Americans concerned about government secrecy**

By THOMAS HARGROVE and GUIDO H. STEMPEL III  
Scripps Howard News Service

Most Americans think the federal government operates with "too much secrecy" and overwhelmingly believe that public access to official records is critical to democracy, according to a Scripps Howard News Service poll.

First Amendment advocates hailed the findings of the survey of 1,007 adult residents of the United States conducted at the request of the American Society of Newspaper Editors as part of its observance of National Sunshine Week, which starts Sunday.

"People clearly think that their federal government is more secretive than state or local governments. And they are probably right," said Lucy Dalglish, executive director of the Arlington, Va.-based Reporters Committee for the Freedom of the Press. "It has become more difficult to get information out of the federal government."

Andy Alexander, chairman of the newspaper editors' Freedom of Information Committee, said the survey confirms that people believe their national government is excessively secretive.

"We commissioned the survey so that we could show, scientifically, what we know anecdotally - citizens want the federal government to be more open and transparent," said Alexander, Washington bureau chief of Cox Newspapers.

The survey, conducted by the Scripps Survey Research Center at Ohio University, found that 59 percent of Americans believe the national government has "too much secrecy." Forty-five percent were as critical of the level of secrecy in their state and local governments.

The findings come at a time when news organizations are challenging hundreds of federal secrets, such as the identities of 500 prison detainees at Guantanamo Bay, Cuba, or records in the investigation of CIA agent Valerie Plame's leaked identity.

Former Attorney General John Ashcroft set a new tone for federal secrecy when, shortly after the 9/11 terrorist attacks, he issued a memo promising to defend federal officials for deciding "to withhold records, in whole or in part" from the public.

"Right now, all of the incentive is for classifying information," said Lee Hamilton, a former member of the 9/11 commission and president of the Woodrow Wilson International Center for Scholars. "You might say the motto is: 'When in doubt, classify.' "

In the poll, 86 percent said they are "very interested" or "somewhat interested" in the "actions and activities" of state and local government, while 88 percent

expressed similar interest in the federal government. Fifty-two percent said they are "very interested" in federal activities compared to 38 percent expressing the highest level of interest in local and state government.

"Americans are intensely interested in what goes on at all levels of government," Alexander said. "Public officials should take note of that. Citizens want to know more about their government, and they clearly do not want more secrecy."

ASNE is spearheading Sunshine Week, in which various news organizations and civic groups seek to raise public awareness of the importance of open government.

The survey asked: "Do you believe that public access to government records is critical to the functioning of good government, or do you believe that it plays only a minor role?" Sixty-two percent said records access is critical, 25 percent said it has a minor role, and 13 percent were undecided or gave other responses.

Respondents were also asked to rate whether various governments are "open and transparent" or "closed and secretive." Only 10 percent thought that state and local governments tend to be "very secretive" and 30 percent said these governments can be "somewhat secretive." Overall, 55 percent said they think these governments are open to public scrutiny.

But the federal government is regarded with greater suspicion. Only 33 percent said Uncle Sam is "very open" or "somewhat open," while 40 percent said it is "somewhat secretive" and 22 percent said it is "very secretive." In both questions, 5 percent were undecided or gave a different response.

There is almost no opposition to so-called "sunshine" or "freedom-of-information" laws that guarantee public access to government records, official meetings and court records. Only about one person in 20 complained that these laws provide "too much access."

About half of the people polled said freedom-of-information legislation gives the public "the right amount of access" to official information, while more than a quarter complained the laws give them "too little access" to public records. About one in six people didn't know enough about sunshine laws to have an opinion.

The poll found that Americans are divided when asked to select the legal standard to determine when information should be released.

Forty-six percent agreed with the statement: "Government records should be considered public and that information should be withheld only if a government agency can show that release of the information would do harm."

But 42 percent agreed with the statement: "It is the responsibility of the government to protect the information it holds and that records should be made public only if the citizen can make a sound legal case for its release."

Twelve percent were undecided.

People who depend on newspapers - rather than television or other sources- to tell them about government activities tend to be more insistent that records be made public and to be more critical of government secrecy. Sixty-two percent of people who rely on newspapers said they believe the federal government is too secretive.

The poll also found that Americans rarely interact with their government and infrequently seek records. Among the findings:

- 37 percent have attended a meeting or hearing of their local government.
- 15 percent have attended a state hearing or meeting.
- 8 percent have gone to a federal hearing or meeting.
- 12 percent have sought records from City Hall or other local agencies.
- 8 percent have asked for state records.
- 6 percent has sought federal records.

Generally, Americans report they found government officials, at all levels, to be either "very helpful" or "somewhat helpful" when they've sought records.

The survey was conducted nationwide by telephone from Feb. 19 to March 3 at Ohio University under a grant from the Scripps Howard Foundation. It has a margin of error of 4 percentage points.

## **Wyoming**

<http://www.billingsgazette.net/articles/2006/03/12/news/wyoming/35-fair.txt>

# **Media: State is fair with records**

**By The Associated Press**

CHEYENNE, Wyo. -- Wyoming has followed the national trend in closing off records that could aid potential terrorist acts, but for the most part there have been no major new restrictions to access of public records and meetings in response to the Sept. 11, 2001, attacks, a representative for state newspapers said.

"I think their response has been very measured," said Jim Angell, executive director of the Wyoming Press Association.

The biggest changes occurred in 2003, when the Legislature approved exceptions to the state public records law to shield from public view certain information -- such as state anti-terrorism plans, blueprints of airports and stadiums and details of security systems.

Supporters said the bill came about when the state Homeland Security Council, which was

reviewing potential terrorist targets in the state, had trouble persuading private firms to provide it with information. The council couldn't guarantee that any information the companies shared would be kept confidential.

"Now Wyoming, you think that's fairly unlikely, but you just never know," said Sen. Charles Scott, R-Casper. "Those people are crazy enough you just never know what they might do."

The Wyoming Press Association worked with the state attorney general to craft the legislation.

Angell said the burden of proving that information should remain confidential is on the custodians of the records.

There is a difference between seeking blueprints to a building's security system and seeking an artist's drawing of a planned building, he said.

And so far, the changes have not caused any conflicts between custodians of records and the public, said Dan Neal, former editor of the Casper Star-Tribune and now director of the Equality State Policy Center -- a government watchdog group in Casper.

There have been changes to the state's open records and meetings act unrelated to security threats. Some changes have been favorable to the public and media, and some have not.

The 2005 Legislature for the first time imposed a penalty -- up to \$750 -- on officials who knowingly or willfully close public meetings in violation of the state law.

In 2002, the Legislature amended the public records act to include provisions for obtaining and inspecting electronic records. However, it also added an exception to the act by exempting records of internal investigations, such as sexual harassment claims, in which releasing the information would constitute a "clearly unwarranted invasion of personal privacy."

There have been a couple of attempts to close autopsy reports, which state law clearly defines as open to the public, but they have failed.

Lawmakers in 2005 also shot down a proposal that would have allowed public boards to close meeting for work sessions on competitive ventures. The bill came about because a hospital board in Sheridan wanted to privately discuss plans for competing against a private group of physicians for outpatient surgeries.

Lawmakers and the media clashed over a proposal this year that would have allowed government workers to delete transitory and inconsequential e-mails. Angell and others argued against the bill, saying it was too broad, and the bill failed in the Legislature.

This year's Legislature did approve a bill, over the objection of the media and Gov. Dave Freudenthal's veto, that establishes that legislators' communications with staff, constituents and contractors are confidential.

Wyoming also is the only state without a "shield law" allowing reporters to protect their sources.

Angell said the lack of a shield law hadn't been an issue in the state because Wyoming reporters rarely rely on an unnamed source stories and because most Wyoming attorneys don't rely on reporters' anonymous sources and notes when preparing cases.

Angell said the fact that the Wyoming Legislature has exempted itself from the open meetings law is of more concern to him than a shield law.

Sen. Bob Peck, R-Riverton and publisher of The (Riverton) Ranger, said that from his

perspective, with both media and government interests, Wyoming is a "pretty wide-open state."

"I think the general tenor of Wyoming, both the political figures and the press, is the free flow of information back and forth," Peck said.

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## Utah

### **St. George Spectrum**

<http://www.thespectrum.com/apps/pbcs.dll/article?AID=/20060315/NEWS01/603150308/1002>

### **Information act serves reporters, general citizenry**

By BRIAN PASSEY

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ST. GEORGE - Forty years ago, the United States entered a new level of government transparency when the Freedom of Information Act was adopted as a new federal law.

The law was amended in 1974 and again in 1996 to include electronic records. Now more than 3 million requests for information under FOIA are filed each year, according to the Coalition of Journalists for Open Government at [www.cjog.org](http://www.cjog.org). Thursday is National FOIA Day.

"It creates a minimum standard of transparency for the government," said Kelly McBride, ethics group leader at the Poynter Institute for Media Studies, a journalism think tank in St. Petersburg, Fla.

McBride said that transparency is necessary if democracy is going to function in the United States. FOIA helps keep government officials honest.

Linda Petersen, president of the Utah Foundation for Open Government, said freedom of information is extremely important but lately it has been under attack. She said Utah's own Government Records Access Management Act is one of the most progressive state-based laws in the United States, but bills proposed in the last legislative session would have weakened its power had they passed.

Petersen said Utah is following a national trend, using the terrorist attacks of Sept. 11, 2001, as an excuse to make national security more important than the media's right to know. This not only affects reporters, but citizens as well, she said.

Freedom of information is important to citizens because it allows them to know what their elected officials are doing with taxpayer money. Petersen said citizens often are outraged when they find out they cannot get information they paid for with tax dollars.

"FOIA is something the ordinary citizen takes for granted until they need it," she said. "The media's right to know is their right to know. As the media's access is curtailed, so is theirs."

Petersen said the only way citizens can watch over their government is to have the access that FOIA protects.

McBride said FOIA allows anyone to knock on the door of government and say, "Show me your records; tell me about your meetings."

Many people may tend to think of government corruption only in bigger cities. But McBride said it is even more important that journalists in smaller communities make use of open records laws.

McBride said the so-called "good-old-boy networks" in smaller communities often create a system of government where things happen because one person knows another. Open records laws give residents the opportunity to ask questions about how a particular contract was awarded or why a person was hired for a job.

But for many who file FOIA requests it often is a long wait before the documents are produced, according to [www.cjog.org](http://www.cjog.org). The Coalition of Journalists for Open Government warned that filing a FOIA request should be a last resort for journalists.

According to the First Amendment Center's Web site at [www.firstamendmentcenter.org](http://www.firstamendmentcenter.org). The Freedom of Information Act records that are not specifically and reasonably exempt."

FOIA applies to all 15 departments in the executive branch, from the Department of Homeland Security to the Department of Agriculture. It also applies to 73 other federal agencies such as the Environmental Protection Agency. It does not, however, apply specifically to the president, Congress or the courts.

## **Colorado**

### **Denver Post**

[http://www.denverpost.com/ci\\_3591010?source=rss](http://www.denverpost.com/ci_3591010?source=rss)

#### **Judicial districts object to public access to files**

**By Chuck Murphy and Jeffrey A. Roberts**  
**Denver Post Staff Writers**

When several judges, clerks and computer experts were appointed in 1999 to examine public access to Colorado court records, they intended to make rules to handle the exploding number of requests for information that could be used commercially.

As time went on, their mission grew. Privacy concerns became paramount. Identity theft became an issue. Worries about court staffing, budgets and even TABOR implications overtook the group, and what resulted has surprised even the panel's chairman, Colorado Supreme Court Justice Alex J. Martinez.

Nearly a year after a 2005 directive from Martinez's panel designed to protect public access, judicial districts serving 19 of Colorado's 64 counties have embarked on the opposite course. They have declared files in all probate and domestic-relations matters, which are mostly divorces, off-limits to the public.

"We certainly anticipated that might occur," Martinez said. "I don't think we anticipated it would go as far as it has."

Probate files, which include wills, estates and guardianships over the elderly and incompetent, are routinely available in other states, as are domestic relations cases. And even in the Colorado counties that have closed public access to them, the files are still available to the parties in a case - and the public can petition a judge for access.

But that process takes time and knowledge of the court system, and there is no guarantee that a request would be granted.

The public could pass a constitutional amendment mandating access to court and other government records, but none has been proposed. Legislators also could pass a law requiring that divorce and probate files remain open.

Instead, legislation pending in the state Senate mimics some of the state Supreme Court's actions, requiring that certain information in future divorce filings be confidential. Rep. Richard Decker, R-Fountain, said his bill provides a way for divorce files "to be opened back up sans information that could be used to steal someone's identity or hurt someone's body." House Bill 1169 has passed the House.

"Taking divorce cases off the books is really kind of ridiculous," said Lucy Dalglish, executive director of the national Reporters Committee for Freedom of the Press. "There are some very high-profile people who tend to get special treatment in divorce court, and having public scrutiny lets you see whether that court is being operated fairly."

In April 2005, Martinez's committee announced new rules for the state's 22 judicial districts. Produced after years of meetings among court insiders, but without input from the public or media, they were intended to "provide a comprehensive framework for public access to court records" while creating a system that "maximizes accessibility to court records."

Most of the changes were intended to accommodate and prepare for the increasing use of electronic documents instead of paper, but one section has created considerable work and consternation for the state's clerks.

That section requires clerks to remove Social Security numbers, driver histories, criminal background information and a host of other items from any file