

## The South

### Kentucky

#### **Advocate Messinger, Danville**

[http://www.amnews.com/public\\_html/?module=displaystory&story\\_id=20214&format=html](http://www.amnews.com/public_html/?module=displaystory&story_id=20214&format=html)

## **Daily effort to shed light on government actions must continue**

**By JON FLEISCHAKER**  
**Contributing Columnist**

*Editor's Note: Jon Fleischaker is the attorney for the Kentucky Press Association and a recognized authority on The First Amendment and open government. He has represented newspapers across the state on a variety of issues and was one of the authors of Kentucky's Sunshine Laws. March 12-18 is "Sunshine Week."*

It has been 31 years since Kentucky adopted its Open Meetings Law (1974) and 29 years since the Open Records Law was adopted (1976). One wonders whether either of these laws, so effective in helping the press and the public understand how government is operating (or not operating) would be adopted today. Our political climate has changed so very much, and for many of us, the change has not been advantageous to good government.

The mid-1970's was probably the high point for the press in many respects. The Supreme Court of the United States was in the midst of generating decisions which increased press protection from defamation lawsuits and related causes of action, protections which have been subsequently eroded. Despite the Branzburg decision in 1972, the political climate was favorable to increasing protection for reporters' sources, and there was an increasing push to open government processes so that the public could be more aware of how its government bodies were behaving. A great deal of this First Amendment fervor was the result of the political activism surrounding the anti-war movement in Vietnam and the Civil Rights movement, both of which began earlier but reached their peak in the early 70's. The push for more favorable access laws, however, was greatly aided by the Watergate scandal and the excesses of the Nixon administration.

#### **Rep. Joe Clarke was an advocate**

Acting through the Kentucky Press Association, it was decided to deal first with an open meetings law. Representatives of the Kentucky Press Association prepared a proposed statute, obtained the commitment of Gov. Wendell Ford, had the bill introduced with the help of Rep. Joe Clarke of Danville, and it passed with little discussion and with great ease. Two years later, after The Courier-Journal was unsuccessful in obtaining access to governmentally maintained records under the then existing law, representatives of the Kentucky Press Association decided to seek a broad open records law. Again, a commitment to support such a law was obtained from Gov. Julian Carroll, and the law was essentially drafted by us. There was substantial informal negotiation with the state police through the governor's office, but very little input from other state or local agencies. That proposed legislation also easily passed and was signed by the governor. Life with the General Assembly was much different then, and it is questionable whether either statute would pass today without efforts to weaken or destroy them.

In fact, in 1990, there was an effort in the General Assembly to revise both the Open Meetings and Open Records Laws to make them less effective. We were successful in defeating that effort, but only by agreeing to the establishment of an interim legislative committee which was to review both laws in depth and report back to the 1992 General Assembly. Representatives of the press were invited to participate in that effort, and attended numerous meetings throughout the two-year period. The process was very instructive and very valuable. The legislators on the committee became aware, probably for the first time, of the uses and the significant impact that open access laws had. As a result, despite efforts by numerous state and local agencies, including universities, the interim committee made proposed changes in the law which substantially strengthened both laws. For example, the definition of "public agency" was substantially broadened, and several exemptions were tightened. These changes were enacted in 1992, and our experience since then has shown that this process was extremely helpful.

After over 30 years of experience with the Kentucky Sunshine Laws, we now know how valuable these laws have been in efforts to inform the public of the operation of its government, at the local and state levels. That success is the result not only of the fact that we have these statutes, but the daily effort that all of us have made in exercising and enforcing our rights under these laws. That effort must continue to be made: The alternative is that the public will lose access to vital information necessary to make the informed decisions so vital to the political process.

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## **Tennessee**

### **Knoxville News Sentinel**

<http://www.knoxstudio.com/shns/story.cfm?pk=SUNSHINE-03-13-06&cat=WW>

#### ***Government moves to reclassify documents***

*By LANCE GAY*

*Scripps Howard News Service*

**WASHINGTON** - For at least seven years, it's been publicly known that 12 days before Red Chinese troops poured over the Korean borders, the CIA issued an intelligence estimate flatly predicting that wouldn't happen.

"Such action is not probable in 1950," the CIA concluded.

But the original 56-year-old document has been reclassified and taken out of public view sometime in the last seven years - one of more than 55,000 pages of previously declassified documents that have been swept from the shelves of the National Archives and removed from public scrutiny as part of a government program of trying to reclassify declassified documents - even some from the World War II era.

Intelligence historian Matthew Aid ridiculed government efforts to put a secrecy stamp back on the documents, noting that it took a laborious process of review to get the papers declassified in the first place.

He noted that that many of the documents reclassified at the National Archives were published in scholarly articles, copied on microfilms and distributed to libraries across the country - or even

published by the U.S. government itself in the official series "Foreign Relations of the United States."

"It's silly to reclassify at this point - the screeners should have known that," Aid said. He said the CIA employed spies nearing retirement age as screeners, and they seem to have employed Cold War judgments in deciding whether some documents should be public.

"It's just a massive waste of money," and seems justified only to hide CIA blunders, he said.

The National Security Archives, a private organization associated with George Washington University, has assembled a partial list of the reclassified documents and concludes that many appear banal. One withdrawn document involves agrarian-reform programs in Guatemala from 1945 to 1956, while another is concerned with highway transportation in the Soviet Union after World War II.

Also reclassified were translations from a Soviet encyclopedia and documents involving official U.S. government foreign travel in 1959. And a withdrawn 1949 document involves the CIA's admission that the intelligence community's knowledge of Soviet weapon research and development was poor.

The disappearing documents at the National Archives are just part of a pattern of activities across the U.S. government in recent years.

In the wake of the 9/11 attacks, government Web sites have been scrubbed of any materials that might be of assistance to terrorists - from architectural designs of aged bridges, to maps of high-pressure gas lines, information on plant and animal diseases, and the layouts of nuclear-power plants. Additionally, the Justice Department has instructed government agencies to take the strictest interpretation under the Freedom of Information Act to withhold any information that might damage the security of the homeland.

Secrecy News, a weekly publication of the Federation of American Scientists assembled by researcher Steven Aftergood, has tracked the withdrawals. In the latest disclosure, the Civil Air Patrol, the civilian arm of the U.S. Air Force, announced in January that it will no longer publicly disclose the radio frequencies it uses because such information is now judged to be "sensitive but unclassified" information.

All of that material is being added to the pile of papers marked with secrecy stamps that end up in National Archives vaults, waiting to be declassified. More than 15.6 million documents were classified in 2004 alone - an 80 percent increase over the number of documents stamped secret in 2001, and costing more than \$7 billion to store.

In 1995, President Bill Clinton issued an executive order directing the Archives to declassify en masse all documents more than 25 years old. Clinton's order has exemptions for very sensitive documents - for example, material that might disclose the identities of CIA informants, or explain how to build a nuclear bomb.

The deadline for completing that declassification is December, but Archives spokeswoman Susan Cooper said the schedule has been disrupted by the issue of reclassifying previously declassified documents.

Archivist Allen Weinstein has ordered a moratorium on any further documents being withdrawn from public view, and asked for new guidelines to be written concerning any further withdrawals.

Weinstein said he's also ordered an audit to come up with a complete list of documents withdrawn.

Cooper said staff involved in the declassification of 25-year-old documents have been diverted to complete the audit.

"This program is only going to slow us down," she said. "Since 1995, we've declassified 1.4 billion pages, and that's huge. But we've got a lot more to go through."

## **North Carolina**

### **Charlotte Observer**

# **Honoring everyday people who fight secrecy**

**RICK THAMES**

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Every day, Observer journalists bring you stories that could never be published without access to public records or public meetings.

On Saturday, for example, the community heard for the first time what antidepressants Charlotte business executive David Crespi took before police say he stabbed his twin 5-year-old daughters to death in January. A prosecutor opposed release of that information, but a judge granted the Observer's request to make it public.

Today's 1A story on the billing practices of court-appointed lawyers is possible only because documents in the courts and at the jail are open to the public. Those records helped reporters show that courts do little to account for \$50 million a year they pay such lawyers.

It's just as instructive to recall why you *didn't* get more than a few hours to see the details before Charlotte signed a contract with NASCAR to host its hall of fame last week. City officials asserted that state law did not require more disclosure. The Observer disagreed, but could not persuade the city to seek an independent ruling from the state attorney general.

Under all circumstances, any citizen is entitled to the same access that we get as journalists. And often, non-journalists exercise that right in ways that benefit us all.

So, this year we're marking National Sunshine Week (today through Saturday) with stories about people from all walks of life who are advancing the cause of open government in their communities.

Today, on page 19A, you'll meet a former FBI agent who has worked as an elected official to make government more transparent in Western North Carolina's Haywood County, first on the school board and now on its board of commissioners.

On Monday, you'll read about a Mooresville woman who didn't take no for an answer when the town board refused to give her an opportunity to speak at its meeting.

Watch for more profiles later this week. Also check this page each day for advice on how to obtain government information that will help you in your own life.

We start today with nursing homes. If someone you love lives in one, you need to know how to check for complaints, violations and inspection reports.

In coming days, learn how to search real estate records, and how you can look up reports on hospitals, day-care centers, restaurants -- even beauty and nail salons.

It's often said that knowledge is power. This week, we champion American citizens who empower *themselves* through access that is their right in a free and open society.

<http://www.charlotte.com/mld/observer/news/local/14092811.htm>

## **N.C. open records laws lack penalties**

### **Speakers say officials must face consequences if they close meetings**

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**RALEIGH** - Reporters and watchdog groups have exposed political scandals using the state's public records and open meetings laws. But those laws need stronger penalties for cases when public officials try to circumvent them, said speakers at an open government conference Monday.

"I've always felt that it's not really much good to have a law in place unless you have consequences," said state Attorney General Roy Cooper at a meeting of the N.C. Open Government Coalition.

The coalition, launched last year, includes print and broadcast newsroom leaders, heads of civic groups, media lawyers and others who are pushing for more public access to government proceedings. Observer Editor Rick Thames serves on the group's board.

The public records and open meetings laws compel governments to consider their business open to the public's view, with a few exceptions. But N.C. public officials don't face civil fines or criminal penalties for violating the law, as they do in other states.

UNC Chapel Hill media law professor Cathy Packer said her students question why public officials comply with the law at all.

"To them, it seems kind of silly that we carry on about how great these laws are when there are no penalties."

Cooper helped rewrite the open meetings and public records laws in the 1990s as a state senator. Last year, the attorney general said lawmakers should spell out which House and Senate members request specific state budget spending items. That demand came after reporters published stories about special funds that gave control of millions of taxpayer dollars to a few legislative leaders.

Cooper also called for more public officials to disclose financial ties after media reports last fall that Kevin Geddings, a then-lottery commissioner, was paid \$42,000 as a consultant for lottery company Scientific Games.

Geddings stepped down from the nine-member lottery commission in November, which chose another vendor, GTECH Holdings, as its main vendor.

Bob Hall, research director of watchdog group Democracy North Carolina, filed a complaint about donors to House Speaker Jim Black have sparked an investigation by the N.C. Elections Board, said the public records law is invaluable to his research. This is "Sunshine Week," when newspapers and other media are emphasizing public access to government documents, records and meetings. The Observer will focus on ordinary citizens who exercise their right to be informed.

<http://www.charlotte.com/mld/observer/news/local/14092809.htm>

## **They use public records to fight project**

Couple trying to stop plan for 4 new houses on flood-prone land

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Analyzing public documents and challenging development became Cindy Woodlief's day job in the summer of 2003 after she spotted a developer in her Eastover backyard with plans in hand.

Since then, Woodlief, her husband John, have been trying to stop E.C. Griffith Co. from building four houses on six acres of flood-prone land next to Briar Creek -- while accusing city and county officials of bending over backward for the developer.

Woodlief, who says she fears the development would cause more floods, threatening her home, has used public documents extensively to build her case.

A former investment banker and auditor, the stay-at-home mom pored over floodplain ordinances and audited two years worth of land development permits. The mother of two spotted numerous errors, from missing engineering studies, missing documentation and an unsigned permit -- and also showed that county officials erroneously issued a stormwater permit to E.C. Griffith.

In spite of the couple's efforts, the N.C. Court of Appeals recently ruled that the developer can build on the floodplain. The Woodliefs are waiting for an outcome of their appeal on the approval of the subdivision, which could be determined over the next few months in the appellate court in Raleigh.

The Woodliefs have hired a lawyer to represent them, complained about company engineers and government lawyers and spent tens of thousands on the case -- and they say it's worth it. John is the CFO of Harris Teeter parent company Ruddick Corp.

"As painful as it was, I feel like it was a civic service," said Cindy Woodlief on Monday morning, outside her 5,000 square-foot brick Twiford Place home. "It made them know someone was paying attention -- they couldn't do what they wanted."

But it's gotten contentious. During his 11 years at the city, senior assistant city attorney Robert Hagemann said he can't think of other citizens who've been as aggressive in accusing government employees of professional misconduct.

"Everything is personal," Hagemann said. "It's very disappointing."

Peter Hitchens, a developer who's working with E.C. Griffith on the Eastover Woods subdivision, said in a statement he and his family want to live in one of the subdivision's four houses, proof that the developer has no intent to cause floods.

"Isn't it ironic that the Woodliefs live in the same flood fringe that they say is too dangerous for my family to live in?," Hitchens said. "We just wish this would get resolved."

The Woodliefs say their home wasn't susceptible to floods when they moved in 14 years ago. They also say they're prepared to keep fighting. Cindy plans to put up signs warning of flash flood hazards in her yard when E.C. Griffith markets the property.

"The slightest thing they do wrong -- I'm going to put the building inspector on them," she said.

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## **He saw secrecy breed corruption**

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**WAYNESVILLE** - Acting on a tip, Chicago police approached the scruffy-looking man in a parked car. On the front seat they found a 9 mm pistol, its serial number scraped off. They handcuffed Mark Swanger and took him to jail.

Unknown to them, Swanger was an undercover FBI agent. His 1983 arrest was part of a federal sting that led to the prosecution of 87 Chicago-area judges, lawyers and court personnel.

Corruption was Swanger's beat. Over a 32-year career, he worked hundreds of such cases involving judges, mayors and members of Congress. He learned that corruption festers amid secrecy and deception, that openness and transparency are the best antidotes.

Swanger, 55, put those lessons to work, first as head of the school board and now as chairman of the county commissioners in mountainous Haywood County, 150 miles west of Charlotte. Last year his efforts to open government won him the N.C. Press Association's First Amendment award.

"You just instinctively knew when something contrary to the public good was about to take place," says Swanger, a Democrat. "It has a certain smell to it."

At his urging, the Haywood boards began videotaping and broadcasting board meetings, providing detailed minutes of closed sessions, and delaying controversial votes until the public had a say.

The NCPA said Swanger's changes came "during a climate of general public discontent over what was perceived as a secretive board that made a concerted effort to block the public out of the decision-making process."

"There was just a real feeling of mistrust," recalls Scott McLeod, editor and publisher of the weekly Smoky Mountain News, which nominated Swanger. "He's putting in place processes so that people can really feel they have a say in local government."

With broad shoulders and wire-rim glasses beneath a receding hairline, Swanger presided over a board meeting last week. Leaning back in his chair, he listened attentively as citizens and fellow commissioners had their say.

Though he was elected by wide margins, his hands-on style has ruffled feathers.

When he became school board chairman in 1996, the superintendent quit the day he took office. The longtime county manager with whom he'd feuded resigned under pressure a few weeks ago. The ouster prompted Swanger's critics to start a group that hopes to unseat him this fall.

### **An end to back-room deals**

Swanger's political career started late. He grew up in nearby Transylvania County. After graduating from Brevard High in 1969, he went to Washington for a support job with the FBI. During the day he delivered inter-office mail. At night he attended American University and earned his degree four years later.

He became a special agent in 1975. Over the next two decades, he worked in several states and spent two years as national coordinator for organized crime and corruption at FBI headquarters. He returned to North Carolina in 1990 as the bureau's agent-in-charge for eastern Tennessee counties that bordered North Carolina.

A fan of the outdoors, he and his family settled in Haywood, a county of 56,000 with an economy based on agriculture and tourism. They moved to a small farming community near the Tennessee line into a house they'd built on land that had been in their family since the early 1800s.

Five years later, the father of two daughters got angry when, with no public hearing, school officials closed a nearby school. As Swanger saw it, it was the kind of back-room deal that ignored public opinion.

"They couldn't make good decisions because they had a flawed process," he says. "You knew their minds were made up. The public hearing was a farce."

Swanger had never considered politics. But frustrated by what he was seeing, he ran for school board chairman in 1996 and won. There he introduced changes that he would later bring to the board of county commissioners. He retired from the bureau five years ago.

He barred last-minute additions to agendas, delayed board votes until at least 48 hours after a public hearing, ensured that background material available to board members is available to everybody, and identified the topics of closed hearings on public agendas.

"The (county) board I served on at the time unfortunately did not believe in sunshine," says longtime commissioner Mary Ann Enloe. "The back-door dealings were disturbing. ... That's why there was such a breath of fresh air to have someone like Mark as chairman."

### **Taking on the good ol' boys**

Swanger has his critics.

"Our chairman appears to be micro-managing," says Bill Bird, chairman of the group opposing Swanger. "I'm not sure everyone believes there's open government up here, even though that's what's preached."

Commissioner Larry Ammons, a supporter of the ousted manager, says Swanger "dabbles in personnel issues too much."

Swanger has heard it before.

"The micro-management, I've heard that ever since Day One," he says. "I am admittedly hands-on and I am admittedly engaged ... I'm not a rubber stamp. I double-check facts and I demand accountability. ..."

"I've made some enemies, there's no question. You have to take on this good ol' boy culture sometimes. If you don't take it on, you really can't get anything done."

Soon, Swanger says, he'll start making his e-mails to other county officials available to the media. And he plans to demand more accountability from nonprofit groups, making them adhere to open meetings laws to get public money.

To Swanger, what's good for government is good for him.

When a reporter offers to buy his tuna sandwich at lunch, he insists on picking up his own check. "Not even a cup of coffee," he says.

Though facing opposition, he won't seek or accept campaign contributions. He expects to spend a couple of thousand dollars out of his pocket and recycle signs that he and his wife, Susan, painted in their garage.

"That's the reason I couldn't run for (higher) office," he says. "I couldn't go out and beg for money."

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## **Woman forced board to listen**

**She sued, demanding a policy that ensured citizens' right to speak**

KATHRYN THIER

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Beth Sherrill of Mooresville started speaking out at Town Board meetings in September 2002 when her wastewater rates suddenly doubled.

She soon found out her comments weren't welcome.

Her request to be placed on the speaking agenda at the Nov. 4, 2002, Town Board meeting was denied.

When Sherrill asked why in an e-mail to the town, the response from a town official was: "The majority of the Board did not wish to hear you speak."

She thought it was arrogant. "It was very evident, 'Hey, we can just brush you aside if we choose to,' " she said.

She sued the town claiming Mooresville violated her First Amendment rights and asking the town to establish a policy guaranteeing the public's right to address the board.

Under N.C. law at that time, local governments weren't required to let the public speak at open meetings, although many did.

Mooresville didn't have a formal policy, but allowed speakers if they notified the town clerk with their topic in advance and if the mayor or board agreed to place them on the agenda.

State law now requires one public comment period a month at a regular meeting for local government and school boards.

A month after Sherrill sued, Mooresville established a public speaker policy and then later settled the suit in mediation.

Sherrill, 46, a personal computer specialist at Davidson College, continues to speak at town meetings, often researching her topics using public documents from the town offices.

For example, she has spoken out against the firings of town employees and a controversial wastewater treatment plant contract.

"Injustice drives me crazy and I guess that's what drives me," she said.

Although Sherrill isn't a town resident, her subdivision is within the town's zoning jurisdiction and she is a town wastewater service customer.

She said she has noticed a real turnaround among town officials and appreciates their willingness to be more open.

Commissioner Franklin Campbell, who was on the board four years ago, said he can't comment on Sherrill's lawsuit, but said having a public comment period is a "positive step."

"It's our duty to hear what our constituents want to tell us whether we want to hear it or not," he said. This is "Sunshine Week," when newspapers and other media are emphasizing public access to government documents, records and meetings. The Observer will focus on ordinary citizens who exercise their right to be informed.

#### SUNSHINE WEEK

## **Real estate files made easy**

ALLEN NORWOOD

Home Editor

No government records are more public than real estate records.

Thanks to online access, in many counties you can find out with a click or two how much that house down the street sold for. You can learn the sales history of a house you're

thinking about buying, or find out about additions and improvements over the years. You'll find pictures in many cases, even aerial photos.

Mecklenburg's online system will even give you a color-coded map of sales in your neighborhood -- with prices superimposed in red.

"People love it," said Dave Farrow, an information technology analyst for the county. "If there's any little glitch, the paralegals call and say, 'Hey! What are you doing?'"

Here's a quick look at Mecklenburg's online property records system.

There are all sorts of ways to reach the county's real estate information, but if you take shortcuts -- as many do -- you risk bypassing amazing online tools.

Here's one way to get there:

- Start by going to [www.charmeck.org](http://www.charmeck.org). Click on "Taxes & Revenue" and then "Real Estate Property Tax."
- Click on "POLARIS," which stands for Property Ownership Land Records Information System.
- Click "Search" on the right side of the window. You can search by street, owner's name, parcel identification number. If you're new to this, though, just type in your own Mecklenburg street address where it says "Parcel Address Search." Hit "Find," and you'll see a link pop up with a parcel ID number.
- Click on the number, and the system will map your lot. (Give it a minute.)
- Click on "Layers" on the right side of the screen, which will reveal search options on the left. Click on the little box that says "Sales By Deed Year." Scroll down and hit "Refresh Map."
- The system should produce a map of sales for the past five years or so, color coded by year. The recorded price is superimposed in red.
- Click on "Legend" to decipher the color code. And you can zoom in and out to change the area you're viewing.

The system does much more than offer real estate records. See where it says "2004 Aerial Photography?" Click the box and refresh the map for a view from above. Or click "Measure," add some way points to the map with a few more clicks -- and calculate the distance of your daily run to the 100th of a foot.

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## **How you can check records when picking a nursing home**

### **Reports on complaints, violations and inspections all open to public**

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When an Alzheimer's patient died in January after she had been missing at a Charlotte nursing home, media reports revealed a record of serious violations at the home.

Those violations came as a surprise to some family members of residents. But they didn't have to be. Public records can provide lots of information about nursing homes or assisted living facilities -- if you know where to find them.

The first place to look? At the facility itself. Nursing homes and assisted-living facilities must make inspection reports available to the public. Just ask.

Other public records include:

- [www.medicare.gov](http://www.medicare.gov). Scroll down, then click on "Compare Nursing Homes in Your Area." You can find the number and severity of recent violations at specific nursing homes, and how those numbers compare with other homes in your area.
- Recent complaint and inspection information on nursing homes, available at the N.C. Division of Facility Services' nursing home section: (919) 733-7461.
- Monitoring and inspection records for assisted living facilities. To view or copy these records, call the adult care home specialist at the county Department of Social Services. (In Mecklenburg: (704) 432-0140.)
- In South Carolina, get copies of complaint and violation reports on both nursing homes and assisted living facilities from the S.C. Department of Health and Environmental Control's Division of Health Licensing, (803) 545-4370.

More information on long-term care options, check the N.C. Division of Aging's Web site: [www.dhhs.state.nc.us/aging/ltoptions.htm](http://www.dhhs.state.nc.us/aging/ltoptions.htm).

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# **Nation thrives in sunshine**

## **Safeguard true secrets, but don't stop free flow of other information**

### **HODDING CARTER**

Special to the Observer

In 1958, at the height of the Cold War, I was stationed at the Second Marine Division as a communications watch officer with top secret clearance.

That meant I regularly locked myself in a crypto vault and broke coded messages from around the world. The Lebanese incursion was underway, a Marine expedition, and so there was heavy encrypted radio traffic flowing into division headquarters.

What I encountered was instructive. Much of the material traveling under high classification was, for the most part, information I could obtain from reading the newspapers.

That did not mean big secrets were being made public. It meant that innocuous information was being classified for unfathomable reasons.

Twenty years later, I was assistant secretary of state and State Department spokesman in the Carter administration. In that job I regularly received and reviewed a large stream of highly classified material. I was also responsible for the department's Freedom of Information activities.

Again, much of what I saw behind closed doors was a puzzlement. Some of it was potentially embarrassing to the administration, much of it was boilerplate and only bits and pieces were of enough significance to be kept under classified lock and key.

With that as background, plus a couple of decades as a reporter covering foreign policy issues, I have come to a firm conclusion: The vast majority of all classified material could be released to the public without harming national security one iota.

And that is where Sunshine Week comes in. It means to push back against the coordinated campaign to wall off the American people from the information they need to function effectively as citizens. It builds on some of the oldest propositions in this democratic republic.

Of course, the thought-controllers' arguments are even older, dating back to the divine right of kings.

- We're classifying tens of millions of documents to protect you -- to guard national security -- says Washington.
- We're closing police records to guarantee a fair trial or preserve privacy interests, says City Hall.
- We need closed-door meetings to insure frank exchanges and uninhibited debate, they say just about everywhere.

And when all else fails, the debate-ending clincher in Washington always comes back to "national security." When that is invoked, we're supposed to shut up, salute and go back to watching "American Idol."

We shouldn't.

There is a core of truth beneath what is otherwise a vast load of self-serving manure. There are secrets whose exposure would damage national security. They must be safeguarded. That much is true.

But the burden of proof in this society is on government. It is contemptible to hide behind national security to justify covering up failed policies and faked evidence.

Telling the world when and where we intend to strike at an enemy force would obviously be a despicable act. Refusing to give Americans an honest accounting on the continued inability to provide enough armor-plating for our troop carriers is also despicable.

"Trust me" won't do.

Ronald Reagan went to the heart of the matter two decades ago. "Trust, but verify," he memorably said. He was talking about dealing with the Soviet Union, but those should be the watchwords for free men and women everywhere when dealing with government.

Unfortunately, the climate in Washington -- and in too many state capitals and county seats -- is hostile to what the brave Russian reformers of the 1980s called "glasnost," openness.

Citing the necessities of war -- a war undeclared by Congress and made open-ended by presidential declaration -- federal agencies are classifying information at record rates. They are also simultaneously subverting the nation's hard-won Freedom of Information law, making it increasingly difficult to extract information from the packed warehouses where the federal bureaucracy hides the record of its activities behind locked doors.

Luckily, Americans have never been fond of Big Brother. When we stop to think about it, we can sort out the legitimate demands of national security from the limitless claims of big government.

The people should not have to prove a right to access. Our Revolution and our Constitution long ago settled the fundamental issue: Official information does not belong to the king -- to the state. It belongs to the people, who are sovereign.

Democracy sickens without accountability. Accountability is impossible without the free flow of news and information, a point we make repeatedly when lecturing repressive regimes abroad. Sunshine Week is the time to say it here at home, loud, clear and all together.

## **Reidsville Review**

[http://www.reidsvillereview.com/servlet/Satellite?pagename=RVR/MGArticle/RVR\\_BasicArticle&c=MGArticle&cid=1137834750377&path=!frontpage](http://www.reidsvillereview.com/servlet/Satellite?pagename=RVR/MGArticle/RVR_BasicArticle&c=MGArticle&cid=1137834750377&path=!frontpage)

## **Office of deeds going digital**

Miranda Baines  
Staff Writer

A wealth of knowledge is at Rockingham County residents' fingertips. Since most public records are now digitized, citizens can access most public information on their personal computers.

Those who want more personalized information can visit a public records office in the county, such as the tax department or the register of deeds.

So what exactly is public record? Charles Thomas, Rockingham County property tax administrator, said, "Almost anything that is produced from public funds is public record."

Thomas said "values, tax amounts and who owns what property" are all public records the tax department offers, whereas "anything that reflects income information" is not public record. Janet Martin, citizen service technician for the county tax department, added phone numbers and Social Security numbers are not considered public information.

She said the tax department assists people interested in buying a home by providing them access to property maps and aerial photographs that show the property's dimensions and surrounding areas.

She said prospective homeowners also could obtain adjoining owner information and the number of properties sold in a certain neighborhood.

In addition, Martin said prospective homeowners could request a property card that lists the name of the current homeowner, the exact address of the property, the property deed reference, square footage of the property and the value of the home.

Martin advises customers to find out the exact location of their prospective property before coming to the tax office to request information. She said people could find this information by consulting a realtor or accessing a map of the county online.

Thomas said the tax department assists 12 to 15 walk-in customers per day in obtaining property tax information.

Martin said she receives between 70 and 80 phone calls each day from people requesting information.

Despite the friendly customer service at the tax department, Thomas said the easiest, most convenient way to access property tax information is by visiting the county's Web site at [www.co.rockingham.nc.us](http://www.co.rockingham.nc.us) and clicking on "property tax information."

Martin said all the information available at the tax department is accessible online, including aerial photographs of property.

The register of deeds office also is in the process of digitizing its records. Rebecca Cipriani, register of deeds, said one of her goals is to make the deeds office "more accessible, user friendly and safer."

She said the deeds office had no searchable Web site before 1998. Now that the office has a working Web site ([www.rockinghamcorod.org](http://www.rockinghamcorod.org)), county residents can access deeds 24 hours a day without having to come into the office. Cipriani said the Web site averages 1,866 hits per day for the number of images retrieved.

Cipriani listed land records, vital records of births, deaths and marriages, delayed birth records, military discharge records and notary records as some of the records the register of deeds offers to the public. She said the public could access the majority of these records online, although some of the records still do not have online indexes. For instance, Cipriani said people searching for a land record prior to 1996 must look up the name of the property owner and the year of the record in the paper index in order to access the digitized image of the property.

She said the office provides access to public records free of charge but charges a small fee for special services, such as making copies of records. In the future, Cipriani said she plans to create an informational Web site to teach people how to access records in the register of deeds office and answer any questions they may have concerning office services or records.

Rachel Millner, assistant register of deeds, said one of the main challenges the office faces is upgrading new technologies before the old technologies become obsolete. For instance, Cipriani said the deeds office is currently working on a project to convert the outdated apertures (cards used to store records) to the computer system. Thomas reiterated Millner and Cipriani's concerns regarding the growth of technology. "I think technology is growing faster than we're able to handle it," he said. "Hopefully it will level off eventually."

Not only does Cipriani face the challenge of keeping up with new technology, but she also has to deal with the increasing volume of records and the number of people requesting services. She noted the number of uncertified copies made in the office has increased 263 percent in a 10-year period. In addition, Cipriani has observed an increase in the number of interest groups, such as genealogists, requesting information. She said her office also provides records to government offices such as public health, Social Services, and the tax department, as well as businesses and consumers. Cipriani also noted the office now serves customers internationally rather than just locally because of the expansion of the mortgage industry.

She said the recent growth in economic development increases the number of records the deeds office has to manage. Cipriani cited the building of the new equestrian center on U.S. Highway 29, the expansion of the water and sewer system on U.S. Highway 220 and grave removals due to the construction of the Reidsville Wal-Mart as current issues that may lead to an increase in the number of records housed in the deeds office.

Cipriani said government legislation impacts which records the register of deeds office can and cannot offer to the public. For example, she said the Identity Theft Protection Act, which became effective Dec. 1, 2005, gives citizens the opportunity to request a redaction of personal information listed online. To obtain a copy of the "Public Records Redaction Request," visit the register of deeds' Web site ([www.rockinghamcorod.org](http://www.rockinghamcorod.org)). Cipriani said yet another form of legislation affecting public access to records is a government mandate effective Jan. 1, 2004 deeming military discharges public record with restricted access.

Thomas said many states are limiting access to information in reaction to the exponential growth of technology and the terrorist attacks of 9-11, but North Carolina residents should not have any trouble accessing public records. He asserted, "North Carolina is a fairly open state when it comes to public record."

Thomas acknowledged there is a fine line between people's protection and their right to know but said he thinks it is better to err on the side of knowledge. He said he believes people have a right to access information that may affect them. "I hope because of being afraid, we don't cloister ourselves so tightly that we don't know what's transpiring in the world around us," said Thomas.

With the growth of technology, citizens have easy access to enormous volumes of information. Thomas said he thinks as long as people do not abuse this information, the free flow of knowledge will be beneficial to society by keeping citizens informed and involved in the world around them.

## **Greenville Daily Reflector**

<http://www.reflector.com/local/content/news/stories/2006/03/15/20060315GDRsunshine.html>

### **Public worries about federal secrecy**

By Rebecca Carr Cox News Service

WASHINGTON – A new nationwide survey finds that most Americans believe the federal government is too secretive but state and local governments are not.

The poll, conducted by the Scripps Survey Research Center at Ohio University, found that 59 percent of Americans believe the federal government has "too much secrecy."

That contrasts with the public's view of transparency in state and local governments. Most of the survey's respondents – 55 percent – believe local and state governments generally operate in an open way.

The survey comes at a time of increasing tension between the Bush administration and open government advocates.

In recent months, Bush has disclosed that he authorized the National Security Agency to eavesdrop on telephone calls in the United States of suspected terrorists without obtaining permission from the Foreign Intelligence Surveillance Court, which is charged by Congress with approving domestic spying.

The public also learned that intelligence agencies quietly removed thousands of previously declassified documents from the open shelves of the National Archives and Records Administration. And it took a federal court battle for the public to finally see secret photographs of detainees who had been abused in Iraq.

"The record-setting secrecy going on in Washington is no longer a secret outside the Beltway where people know we're just not safer in the dark," said Thomas S. Blanton, director of the National Security Archive at George Washington University, after reviewing the survey. "The hallmark of our nation right now is secrecy."

The Bush administration disagrees.

Brian Roehrkasse, the Justice Department's deputy director of public affairs, pointed to a record number of requests for records filed under the Freedom of Information Act last year as evidence that the administration is providing access to the public.

"Providing the appropriate public access to government records is a top priority for this administration so long as revealing such information does not jeopardize national security," Roehrkasse said.

The survey of 1,007 adult U.S. residents looked beyond the president's eavesdropping program. The survey was conducted between Feb. 19 and March 3 by the Scripps center at the request of the American Society of Newspapers Editors. Today's (Sunday) release of the findings coincides with the kickoff of national Sunshine Week, a week of events dedicated to highlighting the importance of an open government. The survey has a margin of error of 4 percentage points.

It found that most Americans believe access to public records is critical to good government.

And an overwhelming number of respondents want to know about the activities of their governments, with 88 percent expressing an interest in the federal government and 86 percent at the local and state levels.

Yet Americans rarely seek records or interact with their government on any level.

The survey found that only 37 percent have attended a meeting or hearing of their local government. Fewer – just 15 percent - have been to a state hearing and only 8 percent have witnessed a federal meeting.

The study shows the public is interested in all levels of government, said Paul K. McMasters, ombudsman at the First Amendment Center, a non-profit organization based in Virginia that is devoted to preserving the First Amendment.

"Despite that high interest, however, few citizens actually request information from government agencies, at least in part because there are so many barriers to access," McMasters said.

Public officials generally prefer to withhold or carefully dole it out in doses, McMasters said.

"Overall, the survey confirms that when it comes to government information, Americans get it," McMasters said. "They understand that over time excessive government secrecy will clog the arteries of democracy."

The poll's respondents were asked to rate whether local and state governments are "open and transparent" or "closed and secretive." Overall, 55 percent said they think those governments are open to public scrutiny.

But Americans view the federal government with more suspicion. Only 33 percent said the federal government is "very open" or "somewhat open." The vast majority - 62 percent - said the federal government is either "somewhat secretive" or "completely secretive."

"Clearly there is a wide distrust in the federal government," said William Chamberlin, director of the Marion Brechner Citizen Access Project at the University of Florida. "Much of the public believes that the administration is hiding information and is not forthright and honest when confronted with information it tried to hide."

There is virtually no opposition to open government laws such as the federal Freedom of Information Act that guarantees the public the right to access records, the survey found. Only about one in 20 complained that these laws provide "too much access."

But the poll found that Americans are split about whether the burden should be on citizens or government officials in determining whether information should be released.

Forty-six percent said government records should be considered public and that information should be withheld only if an agency can show that its release would do harm.

But 42 percent said the government should keep records secret unless a citizen can make a sound legal case for their release.

Rebecca Carr's e-mail address is [rcarr@coxnews.com](mailto:rcarr@coxnews.com). On the Web: Survey results: [www.sunshineweek.org/sunshineweek/polls](http://www.sunshineweek.org/sunshineweek/polls).

## **South Carolina**

### **Myrtle Beach Sun News**

<http://www.myrtlebeachonline.com/mld/myrtlebeachonline/news/local/14120460.htm>

## **Freedom of Information bills bolster law in S.C.**

By Jim Davenport  
The Associated Press

**COLUMBIA** - A series of bills to strengthen the state's open meetings and records laws have been introduced in the state House.

Rep. Phil Sinclair, R-Spartanburg, filed four bills this week that would target chance meetings that skirt the law, require affidavits when public officials close meetings, shorten the time that public bodies have to respond to requests and cap copying costs.

The measures, filed in the midst of the news media's national recognition of Sunshine Week for open meetings and records, target issues in South Carolina's Freedom of Information Act that have created problems for the media and the public.

"It's very appropriate to do it during Sunshine Week," said Bill Rogers, executive director of the S.C. Press Association.

Last year, the SCPA, The Associated Press and newspapers across the state examined how county councils and school boards conduct closed meetings and how police agencies handle public records.

Among the councils and boards, a quarter of the members surveyed said they had been in closed-door meetings where state law was broken because discussions strayed beyond the allowed topics.

The audit's findings prompted calls for a change that would require public bodies to sign affidavits after they've used a privilege in the FOI law to bar the public from discussions.

Sinclair's legislation would require all members of a public body to sign an affidavit swearing that they told the public what topics they would discuss and that they discussed only those behind closed doors. If they lie and are convicted, they could be fined \$100 and put in jail for up to six months.

That's similar to laws on the books in Georgia and Virginia, Rogers said, and it should help public bodies take executive sessions seriously and avoid making mistakes.

A related bill would target informal meetings that could be used to skirt the law. Currently, members of a public body can't use social gatherings, e-mail or chance meetings to circumvent the spirit of the law and act on items the public body controls. Under the legislation, public bodies would break the law even if they didn't take action during those encounters.

Last year's FOIA audit also found inconsistent copy fees at law enforcement agencies across the state despite a law that says public documents must be provided at the "lowest possible cost."

One of Sinclair's bills says government agencies can charge no more for copies than

<http://www.myrtlebeachonline.com/mld/myrtlebeachonline/news/local/14076392.htm>

## **Sunshine Week: Records of nursing home medication errors private**

GARY D. ROBERTSON  
Associated Press

**RALEIGH, N.C.** - When the General Assembly told the state's nursing homes in 2003 to begin studying how patients get the wrong medicines and to take steps to prevent such mistakes, lawmakers made a point to keep the public out of the process.

The law directed nursing homes form committees to look into the mistakes, but also required the records and proceedings of the committees be kept private. Information is whittled down into a report for the public about the industry as a whole, but reports about individual homes aren't available for public review.

"I think the idea behind it is to get people to report (and) that if the data was used in a negative way, that would deter agencies from reporting," said Beverly Speroff, head of the state office that regulates the state's roughly 400 nursing homes.

But the law also blocks access to what could be considered valuable data for families trying to make decisions about whether a nursing home is safe for a family member. Information about individual homes is only made public if a facility is formally cited for a high error rate or a mistake that results in serious injury or death.

The process "is a smoke screen to hide behind" for the nursing home industry, allowing it to keep error rates secret, said June Brotherton, a board member of Friends of Residents of Long-Term Care. "Whether it needs to hide behind a veil of secrecy, I have doubts about that."

The decision to limit access to the nursing home data in North Carolina is an example of a national trend limiting the public's access to government information since the Sept. 11, 2001, terrorist attacks, according to a new Associated Press analysis of laws in all 50 states. Nationwide, 616 of the 1,023 laws that changed the public's access to government information and meetings appear to have restricted the public's access to information.

In North Carolina, 13 of the at least 16 laws affecting the release of government information passed since the attacks appears to have restricted access. One loosened access, while another two each appear to have both restricted and loosened it.

Among the 13 that tightened access, laws that made confidential the terror response plans of local governments and a new statewide registry of stored biological agents received overwhelming support from the Legislature and few, if any, complaints from the media.

But many of the open meetings and public records laws passed or considered at the General Assembly since the attacks are unrelated to terrorism and homeland security. Rather, they reflect the public's growing concern that too much of their personal information is easily accessible.

An anti-identity theft law approved last year, for example, is designed to discourage governments and businesses from collecting Social Security numbers, although it doesn't prevent media outlets from obtaining public documents. The Legislature also barred the public review of official autopsy photos, largely on the fear that pictures could wind up on the Internet. The state's newspapers had fought for years to keep the photos open to public review.

"I think that people are reacting in a way to increase their privacy in response to things that are decreasing their privacy," said Amanda Martin, general counsel of the North Carolina Press Association. "The Internet potentially exposes information to anyone in the world. It's fundamentally different from ... 10 years ago."

The rules affecting nursing home data were included in a 2003 law, passed without a single vote of opposition, that ordered the creation of "medication management advisory committee" at every nursing home in the state. Comprised of a pharmacist, nursing director, physician and other staff, the committees are required to gather information about every error involving a patient's medication, which is forwarded to a research center at the University of North Carolina at Chapel Hill.

The data is analyzed for an annual report, which is made public. But by law, that report only includes cumulative information about the industry as a whole, and not individual nursing homes.

The 2004-05 annual report said there were 16,106 medication errors, potential errors or near misses made in the year ending last Sept. 30, covering patients in the state's 47,000 nursing home beds. The report found an overall error rate of .005 percent. Less than 1 percent of the errors caused temporary harm or required a trip to the emergency room.

Stacy Flannery, a lobbyist for the N.C. Health Care Facilities Association, which represents the nursing home industry, said the report shows nursing homes are doing a good job. She said the association provides information on its Web site to help consumers choosing a nursing home, including overall compliance rates of individual homes with federal regulations.

Flannery said keeping the data about violations at individual nursing homes private is key to the success of the study committees, which have improved patient safety.

"If you want the profession to accomplish those activities ... you can't expect them to open up that data to public scrutiny," Flannery said.

Consumers usually learn about medication administration problems at individual nursing homes when state regulators cite a facility for an error rate that exceeds 5 percent, measured during an annual inspection, Speroff said. That information is readily available on the federal Medicare program Web site.

Annual inspection documents are also available for those that are below 5 percent, but accessing them requires filing a formal public records request under the state's open records law, which can be a harrowing task. Patient identifying information must be redacted first from the document.

Brotherton said her patients' group lacked the political power to have the error rate records made public - information she said could benefit consumers.

"What we want is a more consistent information approach to this so that people have enough information to make decisions," she said.

## **ON THE NET**

N.C. Open Government Coalition: <http://www.ncopengov.org>

Friends of Residents of Long-Term Care: <http://www.forltc.org>

N.C. Health Care Facilities Association: <http://www.nhcfa.org>

## **Mississippi**

### **Jackson Clarion ledger**

<http://www.clarionledger.com/apps/pbcs.dll/article?AID=/20060320/OPINION/603200307>

## **Public records, meetings are yours to savor**

**By Jeanni Atkins**

**Special to The Clarion-Ledger**

Love a good mystery? I do. But you ought not to have to be as resilient and intrepid as Nevada Barr's Anna Pidgeon or The Pelican Brief's Darby Shaw to unravel mysteries about what your government is up to.

Yet sometimes the talents of a detective are required to find out what went on in meetings or dig out the gems of information hidden from public view in documents when government tries to keep the public in the dark.

Access laws provide the legal tools of procedures needed to pry open government doors and unlock government secrets.

## **IT'S THE PUBLIC'S BUSINESS**

The Open Meetings Act states that "it is hereby declared to be the policy of the State of Mississippi that the formation and determination of public policy is public business and shall be conducted at open meetings except as otherwise provided therein."

The public has a right to receive notices of meetings, to attend, to get access to minutes of proceedings containing a clear explanation of issues and deliberations and votes as well as to tape record what transpires.

Whether any action is taken on issues doesn't affect the requirement for public bodies to hold meetings.

Formation of policy should occur in public sessions - not in conferences among members of an agency prior to the meeting or discussion by phone or e-mail or over coffee or a meal.

The Public Records Act states that it's "the policy of the Legislature that public records must be available for inspection by any person" and "providing access to public records is a duty of each public body."

Duty is the key word.

If a record of a state or local agency doesn't fall under the specific exemptions stated in the law, then you have the right to inspect and to copy it.

## **PROVIDING RECORDS IS VITAL**

Public officials are under a legal obligation to provide public records no matter what form they may take - electronic or otherwise.

Citizens should be included in the process of formulation of policies which affect their lives.

Drawing a veil of secrecy around the actions and decisions of public officials arouses suspicion.

Secrecy, the Supreme Court has said, is fundamentally anti-democratic.

Secrecy invites corruption, waste, fraud, deception and purchasing of influence by interest groups and individuals who are furthering private rather than public ends.

The press enjoys broad First Amendment protection precisely because of the important role journalists play in society by baring the secrets of government, gathering and disseminating information and serving as a watchdog to ensure that taxpayer dollars are being spent wisely and decisions made are in the best interests of the public.

Members of public bodies are accountable to the citizens who pay their salaries.

Keeping government accountable is what access to meetings and records is about.

Getting access to government meetings and documents shouldn't have to be a process of detective work to solve mysteries about how money is being spent and policies are made.

Public bodies have the duty and responsibility to provide access to the decision-making process of government.

In short, it's your right as a citizen in a democracy to receive information that the First Amendment protects.

## **Georgia**

### **Macon Telegraph**

<http://www.macon.com/mld/macon/news/politics/14072089.htm>

## **After contentious year, bids to change open records slow**

**GREG BLUESTEIN**

Associated Press

**ATLANTA** - Spooked by the election year, the contentious debate on scaling back the state's open records protections that marked last year's legislative session in Georgia seems eerily silent now.

When House lawmakers recently did take up a proposal that would chip away at the act - legislation that would close MARTA fare records to the public - it passed unanimously.

"In terms of open government, the volatility of last year is gone," said Hollie Manheimer, the director of the Georgia First Amendment Foundation and a leading advocate for government transparency.

The quiet could be interrupted after November's election, when GOP leaders could once again consider a proposal that would make the state's negotiations with businesses secret.

"Absolutely any agreement the state makes to supply services or consideration should be public information once it's done. But the negotiations over providing incentives to get companies should be confidential," said House Speaker Glenn Richardson in a recent interview.

Opponents contend closing the records robs the public of the right to know what its government is doing. Its backers say that Georgia is now at a disadvantage to other states that allow businesses to negotiate in private.

"That is how business works, that is how the government works," Richardson said. "There's a fine line between the public's right to know and the ability to get things done effectively."

Another proposal that would have allowed developers to submit plans for public-private partnerships in secret never reached a vote. To the delight of open records advocates, the plan was pronounced dead in a tongue-in-cheek committee meeting, where its Senate sponsors wheeled out a plastic skeleton.

While that proposal was laid to rest, at least temporarily, the Legislature did approve a few bills last year that curtailed some open records provisions.

The most contentious restricted access of the names of anonymous donors to universities, which critics said could allow schools to favor anonymous donors who gave money.

Richardson credited the legislation with helping Georgia Tech and Georgia State University earn considerable donations.

"The sky didn't fall and it's OK and it helped our colleges," he said. "It was a good bill."

This session, Richardson has battled the stigma that he favors secret meetings by opening them up online. For the first time, many House committee meetings and press conferences are broadcast on the Internet.

"If you tried to close these proceedings, I'd try to fight you. We're not going to close them," he said.

Some lawmakers, however, remain watchful for any more proposed changes to the state's open records laws.

Since 2002, a flurry of proposals that aimed to tighten or ban access to certain open records became law in Georgia, including legislation that closed records of state transportation bids and restricted the personnel files of some state employees. Much of the legislation was introduced in the name of privacy rights, economic development or security.

Under a Democrat-sponsored proposal, a constitutional amendment would be required to add more exceptions to the state's open government law.

And some Senate Democrats are cautioning against what they say is a more subtle infringement on the public's right to know: A House bill that exempts some government notices from being required to be published in the county's legal newspaper.

State Sen. Tim Golden, D-Valdosta, called it "another effort to put up a barrier that keeps the public from having access to the public's business."

Manheimer, for her part, said she isn't letting her guard now.

"I remember saying last year I was going to be vigilant," said Manheimer. "Now I'm going to be always ready for them. I'm glad they haven't been tried, but we'll be ready."

## **Louisiana**

### **Shreveport Times**

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

### **Louisiana's Sunshine Laws show some dark spots**



By John Hill  
[jhillbr@gannett.com](mailto:jhillbr@gannett.com)

*Editor's note: Newspapers, broadcasters and others are celebrating Sunshine Week, emphasizing the importance of open government to the public. The Times and shreveporttimes.com will feature stories this week that drive dialogue about why open government is important to everyone, not just to journalists.*

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

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

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

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

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

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

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

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

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

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

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

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

### **Balance needed**

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

for Freedom of Information.

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

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

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

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

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

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

### **Trickle down darkness**

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

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

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

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

“When we were dealing with the paper world and you were allowed to see the file, you could view the ideas that went into policy development. E-mail is very easy to be lost,

and it is a lot more difficult to follow,” Lightfoot said.

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

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

### **Dark courts**

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

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

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

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

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

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March 11, 2006

### **To learn more**

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

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

The Secretary of State’s Louisiana Records Management Division provides information on record retention and guidance on managing electronic records: [www.sec.state.la.us/archives/records/recmgt-index.htm#contract](http://www.sec.state.la.us/archives/records/recmgt-index.htm#contract)

The Public Affairs Research Council of Louisiana includes a long primer on citizens' rights, including a suggested letter officially requesting public records, at their site: [www.la-par.org](http://www.la-par.org), click on "PAR publications and products" and scroll to "Citizen's Rights." For help, call the council at (504) 926-8414.

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

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

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

<http://www.shreveporttimes.com/apps/pbcs.dll/article?AID=/20060311/NEWS01/60308003>

## **Citizens' rights under the Public Records Law (R.S. 44:1-41)**

### **Provided by the Public Affairs Research Council of Louisiana**

Anyone 18 or older has the right to examine, copy or obtain a copy of a public record (unless specifically exempted) of any public body including any state, parish or municipal agency or board (including the Legislature). Public records requests may be submitted by mail (by court ruling). Generally anything "having been used, being in use or prepared" for use in the conduct of public business is a public record, regardless of physical form. Public records include such things as drafts of documents, statistics, maps, letters, memos, budget requests, budgets, tapes, electronic data, payrolls, certain retirement information, and tax assessment rolls.

### **Records exempted**

The public records law exempts certain records of state and local agencies and cites all exemptions found in other state laws. Federal laws and court rulings provide additional exemptions. In general, exemptions are designed to prevent disclosure of confidential medical and personal information; proprietary and financial data of individuals and businesses (including tax returns and some information regarding occupational licensing); and selected records of financial institutions.

Exemptions in the state public records law include records pertaining to a legislative investigation in progress and certain records of prosecutive, investigative, law enforcement and correctional agencies or public health investigators. Some law enforcement records become public once relevant litigation is settled or a final judgment of conviction is made.

The following information in an initial police report is public record: a narrative description of the alleged offense; its time, date and location; the name and identification of each person charged with the alleged offense or arrested for it; the property or vehicles involved and the names of the investigating officers. Subsequent investigations and reports are not public record.

Other exemptions include nonfinancial records in the governor's custody as well as internal municipal auditors' working papers until the audit is completed. Certain public employee information is exempt including unlisted home phone numbers, home addresses and phone numbers (at employee's request), Social Security numbers, personnel evaluations (by court ruling), and medical, insurance and some retirement records. Attorney and expert work product done in preparation for trial is exempt.

(For additional detail and exemptions, see full text of the public records law, available from PAR.)

### **Exercising the right to see a public record**

A request for a record should be as specific as possible. A written request can provide documentation for subsequent action if the custodian denies the request.

No fees may be charged for inspecting records during regular business hours. A requester may be asked to pay in advance if overtime is required to make a public record available.

The custodian of a record may ask for identification and proof of age. He is also allowed to ask whether a requester is a convicted felon. (A convicted felon who has exhausted all appeals may only request certain records.) A requester may also be required to sign a register. The custodian must provide "all reasonable comfort and facility" for reviewing the record. A copy must be provided, if requested, although a reasonable fee may be charged. The law directs state agencies to charge 25 cents per page for standard size copies. Other public bodies may charge what they deem to be "reasonable." These charges vary significantly among public bodies. An attorney general opinion has recommended that custodians follow the state agency fee schedule.

If not in "active use" when requested, the record must be "immediately presented." The custodian is required to delete the confidential portion of a record and make the remainder available. If it is unreasonably burdensome or expensive for the custodian to separate the public portion of the record from the confidential portion, the custodian must provide a written statement explaining why. If the record is in "active use," the agency must "promptly certify this in writing" and set a day and an hour within three working days from receipt of the request when the record will be available.

If the agency says the record requested is not in its custody, it must "promptly certify this in writing" and "state in detail" the reason for the record's absence, its location and who has custody.

### **Enforcing the Public Records Law**

A custodian who determines a record is not public, must provide written reasons, including the

legal basis, within three working days. If a requester is denied a public record by a custodian or if five business days have passed since the initial request and the custodian has not responded, the requester may file a civil suit to enforce his right to access. the custodian bears the burden of proving that the record is not subject to disclosure because of either privacy rights or a specific exemption. The law requires the courts to act expeditiously in such suits and to render a decision "as soon as practicable."

If the requester prevails in the suit, the court will award reasonable attorney's fees and other costs. If the requester partially prevails, the court may, at its discretion, award reasonable attorney's fees or an appropriate portion thereof. (The custodian and the public body may each be held liable for the payment of the requester's attorney's fees and other costs of litigation; however, the custodian cannot be held personally liable for these fees and costs if he acted on advice from a lawyer representing the public body.)

The court may also award the requester civil penalties of up to \$100 for each day the custodian arbitrarily failed to give a written explanation of the reasons for denying the request. In addition, if the court finds that the custodian arbitrarily or capriciously withheld a public record, it may award actual damages proven by the requester to have resulted from the custodian's action. (The custodian may be held personally liable for the actual damages unless his denial of the request was based on advice from a lawyer representing the public body.)

In addition to civil remedies, the law also provides criminal penalties. Anyone with custody or control of a public record who violates the law or hinders the inspection of a public record will be fined \$100 to \$1,000, or imprisoned for one to six months upon first conviction. For a subsequent conviction, the penalty is a fine of \$250 to \$2,000 or imprisonment from two to six months, or both.

<http://www.shreveporttimes.com/apps/pbcs.dll/article?AID=/20060314/NEWS01/603140331>

## **DA: Public has a right to know what its government is doing**

### **Don Burkett has pursued complaints lodged at public governing bodies.**

By Vickie Welborn  
[vwelborn@gannett.com](mailto:vwelborn@gannett.com)

- [Louisiana's Sunshine Laws show some dark spots](#)
- [AP chief: Too much information is classified](#)
- [People v. Government](#)
- [Louisiana's Sunshine Laws show some dark spots](#)
- [Sample Federal FOI ACT Request Letter](#)
- [Citizens' rights under the Open Meetings Law \(R.S. 42:4.1-13\)](#)
- [Citizens' rights under the Public Records Law \(R.S. 44:1-41\)](#)
- [Sample letter to request public records \(from Public Affairs Research Council of Louisiana\)](#)

MANSFIELD -- A strong, long-held philosophy that elected officials work for the public is a guiding factor in DeSoto-Sabine District Attorney Don Burkett's staunch support of the state's open meetings and public record laws.

The public has a right to know what it's government is doing at every level, he said, and that is why on several occasions during his 21 years as district attorney, Burkett has required other elected officials in the two parishes he serves to adhere to what is commonly referred to as the state's Sunshine Laws.

"It is the law, and I took an oath to uphold the law," Burkett said of his foremost reason for making sure public officials follow open meeting guidelines and provide records upon request.

Equally important is a conviction that government officials are public servants and "not above the people that we serve," Burkett said.

State law says each district attorney "shall enforce" the provisions of the open meetings law and "shall institute" legal proceedings when a complaint is filed, unless written reasons are given as to why a suit should not be filed. And any individual can pursue enforcement in civil court.

While Burkett has never taken any other public official to court for violation of the laws, his letters to and personal visits with governing bodies have caused many to reverse decisions in response to public complaints.

But Burkett is not alone in the ranks of district attorneys who do not shy away from enforcing the state's Sunshine Laws. Red River Parish District Attorney Bill Jones has taken the parish's School Board to court twice after accusing them of open meetings violations. Bossier-Webster District Attorney Schuyler Marvin has had to get involved in disputes with the city of Bossier and Bossier Parish School Board.

The DeSoto Parish Police Jury, Sabine Parish School Board and Sabine River Authority have been on the receiving end of reminders from Burkett and First Assistant District Attorney Bob Plummer, who is Burkett's go-to person on civil issues, on open meetings issues.

On several occasions, the public bodies had to undo votes.

Burkett's push for openness is reflected in his staff and in their handling of criminal matters.

"When we have a pending criminal case, the file is not open, but when the case is completed, the law provides that it is open to the public."

The district attorney acknowledges there are some situations outlined in the state law that require closed-door meetings, such as the discussion of litigation or some personnel related matters.

"But in general, the day-to-day business should be open to the public," Burkett said.

"As a government official at whatever level, we serve the people ... and they have the right to know what's going on."

#### **AT A GLANCE**

**DeSoto-Sabine District Attorney Don Burkett and his staff have been involved in a variety of open meetings complaints. Following are some.**

**February 2002: First Assistant District Attorney Bob Plummer notifies the DeSoto Police Jury of its failure to post on its public agenda plans for an executive session and a legal reason for the executive session.**

**June 2003: Burkett requires the Sabine River Authority to begin tape-recording its executive sessions as a compromise to a citizen complaint filed about an open meetings violation. The tapes are to be retained for 90 days and are only available for review by court order following a meeting violation complaint.**

**November 2003: Burkett tells the Sabine School Board it violated the open meetings law when it improperly cast votes in an executive session held during the early stages of superintendent selection. The board had to call a second meeting and redo the voting process.**

**February 2004: Burkett serves notice on the DeSoto Police Jury of its failure to provide a sufficient agenda for a January 2004 meeting in which the name of a Grand Cane road was changed without proper public notice. The Police Jury had to undo votes taken during committee meetings and a subsequent regular meeting, thus abandoning plans to change the road name. The issue also prompted the Police Jury to change the date and time of its committee meetings, setting them a full week before the Police Jury's regular meeting.**

**"... The day-to-day business should be open to the public. As a government official at whatever level, we serve the people. ... And they have the right to know what's going on."  
-- Don Burkett, DeSoto-Sabine district attorney**

## **Florida**

### **Sarasota Herald Tribune**

<http://www.heraldtribune.com/apps/pbcs.dll/article?AID=/20060314/NEWS/603140468/1006/SPORTS>

## **Getting public records**

*Tips on how to proceed, costs and what to do if refused*

STAFF REPORT

The Florida Constitution guarantees citizens the right to inspect most documents generated or stored by government agencies and elected bodies.

Citizens aren't required to make the requests in writing or explain why they want the records.

Some records have been deemed too sensitive for public release and have been specifically exempted from disclosure under state law. Among them are documents that reveal the identify of sex crime victims, are part of an ongoing criminal investigation, or reveal information about a government contract negotiation still under way.

In addition, hundreds of other exemptions have been written into state law over the years.

Even so, the public has access to a vast amount of information that can help people in their daily lives. The documents give citizens the ability to keep tabs on government actions that affect their neighborhoods and home values.

They give people the power to protect their families, by reviewing a public school teacher's job performance, or reports on mistakes made by doctors.

All you need to know is how to get the records.

Where should I start?

Identify the agency that maintains the records you want. Call, write or e-mail the agency to request the records and cite Florida Statute 119, the law that makes records public. Make sure your request is for a document (computer files count) because the public records law does not require government officials to do research or even answer your questions, only provide copies of records that already exist.

How long should it take?

Florida law does not set a specific deadline for agencies to produce documents.

However, the statute says that the only delay permitted in turning over records "is the

limited, reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt."

What if I'm refused?

If an agency refuses to turn over the records, ask them to cite what exemption they are relying on to deny your request. If they can't tell you the exemption and still refuse to provide the records, it's time to turn to the state attorney general's mediation program or find a lawyer.

How much will it cost?

If no specific fee has been established by state law, an agency can generally charge up to 15 cents per page for copies.

It also can charge for staff time if the request requires an excessive amount of work. If the request requires an excessive amount of work to compile. The fees can't be more than the actual cost to the agency.

When determining charges, agencies can't have high-paid managers and attorneys do the work in order to increase fees. The salary of the lowest-paid employee able to do the work must be used.

### **What are the consequences for public agencies if I'm denied access to public records?**

Public employees who knowingly violate the public records law are guilty of a misdemeanor punishable by one year in prison or a \$1,000 fine, or both. You can file a complaint with your state attorney's office.

In addition, a person who has been denied access can sue in civil court and recoup attorney's fees if he or she wins.

### **Where can I go for help?**

- You may want to start by reading Florida's public records statute, which appears in Chapter 119 at [www.flsenate.gov/statutes](http://www.flsenate.gov/statutes).
- The state attorney general runs a mediation program to solve disputes over public records. Usually the process can be handled over the phone. (850) 245-0157.
- The attorney general plays a role in interpreting Florida law and regularly issues opinions on how public records should be handled. Those opinions can be searched at [www.myfloridalegal.com](http://www.myfloridalegal.com).
- The First Amendment Foundation, a nonprofit group that champions open government,

answers questions from the public and produces a manual explaining Florida's Government-in-the-Sunshine Law. [www.floridafaf.org](http://www.floridafaf.org). (800) 337-3518.

•The Brechner Center, a nonprofit organization that is housed at the University of Florida, provides resources and information on public records law. [www.brechner.org](http://www.brechner.org). (352) 392-2273.

## **Orlando Sentinel**

<http://www.orlandosentinel.com/news/local/state/orl-compliance1206mar12.0.1905405.story?coll=orl-news-headlines-state>

**SUNSHINE WEEK SPOTLIGHTING THE PUBLIC'S RIGHT TO KNOW**

# **Despite law, access to public records often has hurdles**

Jim Stratton  
Sentinel Staff Writer

March 12, 2006

When Central Florida residents request records from one of their public agencies, there's a good chance they'll ultimately get what they're looking for -- but not without jumping through some unnecessary hoops.

They may be asked to put the request in writing. They may have to explain why they want the records. They may have to identify themselves.

Those requirements are prohibited by law, but they are common practice at public agencies across Florida, a survey by state newspapers shows.

The survey found that 42 percent of 224 agencies failed in some way to follow the state's public-records laws when a media representative, posing as a "regular" resident, requested information. School districts performed the worst, failing the test 51 percent of the time.

Two years ago, 43 percent of all agencies failed a similar audit.

In Central Florida, at least one public agency in each county racked up a violation. Agencies in Seminole County collected four, while agencies in Polk County had six.

Pat Gleason, general counsel to Florida Attorney General Charlie Crist, said the results

indicate that public employees need more training.

"These laws are so important and so critical, we shouldn't be satisfied with anything less than 100 percent compliance," she said. "That is the goal we should be striving to reach."

Public records are the cornerstone of Florida's "Government in the Sunshine" laws. They are often the best -- and sometimes the only -- way for residents to find out what elected officials and government workers are doing.

Residents use them to find out about things such as zoning changes, crime rates in a subdivision, school-district-boundary changes and the impact a new road will have on a neighborhood. Reporters use them for virtually every significant news story about government or elected leaders.

Recently, public records helped reveal Orange County Mayor Rich Crotty's lucrative partnership with a Central Florida developer. Last summer, they showed Orange County Sheriff Kevin Beary made \$43,000 from a nonprofit organization he established with public money.

And in South Florida, public records have exposed widespread mismanagement at the Federal Emergency Management Agency.

#### Testing compliance

To raise awareness about public records, the First Amendment Foundation and the Florida Society of Newspaper Editors teamed up to assess how well agencies complied with public-records laws. Newspapers sent employees to public offices throughout the state to request commonly used records.

The reporters recorded how the requests were handled, noting, for example, whether they were forced to fill out a written request or explain why they wanted the records.

The scores were then tabulated for 224 surveyed agencies.

School districts violated the law 51 percent of the time, and sheriff's offices failed 45 percent of the time. City governments failed the test 41 percent of the time, and county governments failed 31 percent of the time.

In most cases, agencies didn't flatly refuse to meet a request. Instead, they placed illegal requirements on the person making the request, indicated it would take weeks to fill or said only a single, high-ranking official could provide the records.

That's what happened in Osceola when a media representative requested the school superintendent's e-mails to and from School Board members.

On two occasions, she was told that the records would have to come directly from the

superintendent -- the person responsible for running the entire school system.

The system's coordinator of community relations later said the request should have been sent to her office.

"That is not the correct procedure in our school district," Dana Schafer said. "On a daily basis, they [requests] come to our office. You do not have to give your name and do not have to submit it in writing."

Get it in writing?

The results of the surveys show otherwise.

At eight of the 19 agencies surveyed in Central Florida, or 42 percent, media representatives were told they must provide written requests or explain why they wanted the records. Statewide, 18 percent of agencies insisted on written requests.

Florida law makes clear that an agency can't enforce such a policy. Most public-agency attorneys know that, but many front-line public employees don't. They know only that their supervisor has told them to get the requests in writing.

David Mosrie, head of Florida's schools-superintendents association, said the written requests aren't a roadblock to getting records but simply a mechanism to track requests.

"I don't think it's unreasonable or illegal," he said.

But Barbara Petersen, president of the First Amendment Foundation, said forcing residents to write a request or explain why they want the information can have a chilling effect on open government.

A resident seeking information about possible misconduct by a police officer, for example, might be reluctant to reveal his or her identity or purpose for seeking the records.

"Government at all levels is creating a barrier," she said. "These little insidious kinds of policies like, 'I'm sorry; you have to go to the general counsel to make your request' -- they just delay and obfuscate."

Odd responses

Sometimes an agency's response was just puzzling.

This year, when a media representative requested records from the city of DeLand, she was first told they might not be public. Then she was told the records were available but could not be sent via e-mail.

Trouble is, the records she had asked for were e-mails.

After the 2004 audit, the Attorney General's Office spent more time training agencies about the public-records law. But training remains spotty because the state does not require it for most employees.

Consequently, front-line workers who most often deal with the public may know little or nothing about what the law says.

"I think that's my biggest frustration," said Sandra Chance, executive director of the University of Florida's Brechner Center, a nonprofit group that serves as a resource on public-records law.

"The most important people are the people at the front desk, and those people are not being properly trained or educated about the law."

*In your county edition: How local agencies handled records requests.*

## **Daytona Beach News Journal**

<http://www.news-journalonline.com/NewsJournalOnline/News/Headlines/frtHEAD03031206.htm>

## **Violations of public records law continue to thrive**

By CHRIS DAVIS and MATTHEW DOIG

**SARASOTA HERALD-TRIBUNE**

For the second time in three years, a statewide audit by news organizations revealed that Florida's local government agencies consistently fail to provide citizens with unfettered access to public records.

Overall, 42 percent of the 220 local agencies audited violated the state's public records laws. The rate mirrored the results of the first statewide audit in 2004, when 43 percent of agencies failed to comply.

Eight of the agencies tested for the statewide audit were in Volusia and Flagler counties; three of them failed to comply. For a broader look at the local situation, The News-Journal audited an additional eight city halls and police departments. Overall, 37.5 percent of the local agencies failed to comply.

During a week in February, audit volunteers posing as "regular" citizens fanned out across the state to ask for records that are unquestionably open to the public.

They requested e-mails from city, county and school district officials, and a log showing the calls that had come into law enforcement offices.

If the agencies were adhering to the state's constitution, the records should have been handed over with no fuss. Courts have determined that government agencies must protect a citizen's right to remain anonymous when making records requests.

But in many cases, volunteers faced suspicious bureaucrats who said the records could only be released in exchange for a name, a sufficient reason or a written request. Other agencies simply refused to provide the documents.

At the Miami Police Department, a desk clerk incorrectly told the auditor that he needed a subpoena to look at a log of calls police officers had responded to recently.

Contacted after the audit, a spokesman for the department said the clerk should have complied with the request or referred the question to someone else.

"That's unfortunate that that happened, and it should not have happened," said Lt. Bill Schwartz, who is in charge of the public information office. "And we hope it doesn't happen again."

Pat Gleason, general counsel to Attorney General Charlie Crist, said Florida remains ahead of other states when it comes to open records. But she said the latest audit underscores the need to improve.

"These laws are so important and so critical we shouldn't be satisfied with anything less than 100 percent compliance," she said. "That is the goal we should be striving to reach."

A spokesman for Gov. Jeb Bush said the governor's office wants to see local governments comply with open records law but that it doesn't have the authority to force them to do so.

"Gov. Bush obviously thinks Florida's open records law is healthy for the government and keeps everybody above board," spokesman Russell Schweiss said. "There's always room for improvement, but by and large all the agencies are doing a good job complying with public records requests."

## **REPEATED MISTAKES**

Officials around the state said the same thing two years ago, when news organizations disclosed the results of the first audit in February 2004.

Government officials at the state and local levels pledged to take the results seriously and use them as a teaching tool to improve. But the same mistakes made in 2004 were repeated this February.

Barbara Petersen, president of the First Amendment Foundation, said the audit results are further evidence that citizens' access to open records is eroding.

"Government at all levels is creating a barrier, these little insidious kinds of policies like 'I'm sorry, you have to go to the general counsel to make your request,' that just delay and obfuscate," Petersen said.

At sheriff's offices, audit volunteers asked for a dispatch log for the previous 48 hours and a copy of a report mentioned on that log. At school districts, city halls and county administration offices, auditors asked for a week's worth of e-mails between the top administrator and elected officials.

The best results came from county administrative offices, which complied properly 69 percent of the time. The requests for e-mails between the school superintendent and the school board led to the most violations. Less than half of all school districts audited fully complied with the law.

City managers complied with the requests 59 percent of the time; sheriff's offices 55 percent.

Auditors also visited four state agencies. All provided the records properly, including the governor's office, which suspected its public records request was part of the First Amendment Foundation effort.

Most often, the audited agencies understood that a citizen had a right to see the records requested. The stumbling blocks occurred in how the agencies handled the request.

In 16 percent of the audits, public officials demanded to know the auditors' names. A few said they would have to know why the volunteers wanted the records or where they worked.

Eighteen percent of the agencies required a form to be filled out or a written request in order to get the records. Florida's courts have established that government officials can't require citizens to give their names, reveal their employers or explain why they want a record. They also can't be required to write down their requests.

Those requirements can have a chilling effect on access to government because they may discourage people from asking for records, said Sandra Chance, executive director of the University of Florida's Brechner Center, a nonprofit group that serves as a resource on public records law.

In one instance, Chance said she helped a friend ask for records from a police agency because the agency required personal information to get the records. The records she sought were about a police officer and Chance said her friend was afraid of retaliation.

Yet some government agencies argue that they are allowed to require written requests. Others say they need a name or a form filled out just so they can track the records requests that get filed.

David Mosrie, head of Florida's school superintendents association, said the written requests are not an attempt to hide information from the public, but a mechanism to track requests.

"It don't think it's unreasonable or illegal," he said.

Kriss Vallese, communication director for the Florida Association of Counties, refused to comment on the specifics of the audit.

But Vallese pointed out that many local governments are taking extraordinary efforts to share information by making all e-mails available at computer terminals in county buildings or posting government documents on the Internet.

"They are the governments closest to the people," Vallese said. "From an overall statewide perspective, county governments do a good job of being held accountable to their constituents. They're there and available for public comment every week."

## **HOLES IN THE FRONT LINE**

For journalists, lawyers and others who ply their trade with documents and records, Florida is known for its generous open government laws.

But just as the 2004 audit showed, those guarantees aren't always extended to everyday taxpayers.

The problems often begin on the front lines, with the clerks and receptionists citizens are likely to encounter when they walk in and ask for a record.

Gleason of the Attorney General's office said most people who use government records are ordinary citizens looking for information about zoning changes, changes to school boundary zones or other things that impact their lives.

"It's very disappointing that this could be their first experience with government and then they don't get what they are looking for," Gleason said.

A journalist or lawyer might call up an agency's communications director to get a record, but a member of the public is more likely to stroll through the front door and place a request in the lobby.

Often the secretaries, clerks and security guards who greet people aren't trained in how to handle records requests from the public. The problem is made worse because of employee turnover, Gleason said.

Wayne Blanton, executive director of the Florida Association of School Boards, said the state mandates training on open government for elected officials, but not for all employees.

"I think our clerks are not well-trained in either the Sunshine law or the public records law," Blanton said. "A lot of people don't have enough training."

After the 2004 public records audit, Attorney General Crist said the state might need to consider offering more training to government employees. Gleason said that in response to the 2004 audit, the Attorney General's office spent more time training agencies that they aren't allowed to require written public records requests.

But there was no state effort to mandate training. And training remains spotty because the state still doesn't require it for most employees. Training that does occur is largely reserved for agencies and employees who seek it out themselves.

"I think that's my biggest frustration," Chance said. "The most important people are the people at the front desk and those people are not being properly trained or educated about the law."

-- *News-Journal Sunday Editor Denise O'Toole contributed to this report.*

## **Bradenton Herald**

<http://www.bradenton.com/mld/bradenton/news/local/14075765.htm>

# **Florida treads cautiously before taking away access to records**

BRENDAN FARRINGTON

Associated Press

**TALLAHASSEE, Fla.** - Since the Sept. 11 terrorist attacks, there's been a national trend among state governments to use security as a reason to close access to public records.

Florida, for the most part, hasn't followed along.

Immediately after the attacks, four bills were passed during a special session on security that closed public records. None were opposed by open government watchdogs. Since then few security related bills have passed.

That doesn't mean Florida lawmakers don't find other reasons to try to close records. Each of the last five years dozens of bills were filed seeking exemptions. Usually, though, privacy, identity theft and protecting businesses' proprietary information are the reasons cited for the need to close records.

The state, though, has been cautious - at least in the aftermath of Sept. 11 - at how far it goes. Many misguided efforts died, many bills were rewritten to balance the public interest in records with the desire to protect privacy and security. And while some bills

opposed by open government advocates still become law, by the end of each session, the Legislature usually sides on the need to keep government open.

Part of the credit goes to Senate President Tom Lee and House Speaker Allan Bense, said Barbara Petersen, president of the First Amendment Foundation and a close tracker of all public records and open government bills.

"They weigh the issues, the competing interests, and make clear decisions on what might be a good bill and what might be a bad bill. They pay attention," Petersen said. "Most of the bad bills do die."

In the legislative session before the Sept. 11 attacks, 16 new exemptions to public record laws were passed. That total hasn't been reached in any year since the attacks.

After Sept. 11 "our legislators did an excellent job in deciding really what needed to be protected, what would make us more secure and created only those exceptions that were necessary," said Petersen.

Lee, R-Valrico, said security is an important issue, but agreed there needs to be a balance between personal rights and protection.

"We shouldn't back up on those individual liberties," Lee said. "But I think there are times in public life where the risks are sufficient that they warrant changes in public policy."

After planes were flown into the World Trade Center and the Pentagon, lawmakers took a closer look at what they could do to prevent other terrorist attacks. Some ideas were overzealous, like one proposal that would seal records detailing who sells crop dusters, as well as the FAA registration number of crop dusters that are already clearly visible on the planes' tails.

But the four exemptions that eventually became law immediately after the attacks ended up being reasonable by the standards of open government advocates.

They were laws that blocked access to meetings and documents related to threat assessment, emergency evacuation plans and security training; hospital emergency response plans for terrorist acts; the name and location of facilities where vaccines or

other supplies were stored to respond to terrorist attacks; and what public records law enforcement agencies were seeking while investigating threats.

Since 2001, the lawmakers also have passed bills to block access to blueprints of government buildings or other places susceptible to an attack and allow the Domestic Security Oversight Council to discuss criminal investigations or intelligence information behind closed doors.

But there have been scores of other bills that seek exemptions for other reasons. That provides a constant battle for the First Amendment Foundation. In 2002, 150 bills were filed related to public records and open government. Another 150 were filed in 2003. Last year there were 96, but the total could be closer to 150 again this year.

"When I stop to think about it I really do get depressed. We've got a list longer than my arm - and I have very long arms - of bills we're tracking," Peterson said.

Many are legitimate, like laws that protect social security numbers and credit card numbers from being released to the public, or others that keep private personal health records.

Among those that have passed since Sept. 11, 2001 that the first amendment foundation has opposed are bills that prohibit law enforcement and others from keeping lists of gun owners, block access to the names of health care practitioners and facilities named in records held by the Patient Safety Corporation and keep private all personal identifying information in motor vehicle records unless the subject chooses to make them open.

Still, the Legislature did put a constitutional amendment on the ballot that was later approved by voters that requires two-thirds of the House and Senate approve any public records exemptions. Another recent law creates an additional criminal charges for anyone who obtains public records to commit crimes.

Lawmakers acknowledge that they have a responsibility to protect the public's access to government and records.

"If you look at the big picture, government should be open, government should be in the sunshine. Although there are exceptions, like you shouldn't have people's social security numbers because of identity theft, most information should be available to the public," said Sen. Ron Klieg, D-Delray Beach.

Klein is also hoping to pass a bill this year to force government agencies to respond more quickly to public records requests, saying people shouldn't have to wait months or face exorbitant fees to obtain records.

And lawmakers are usually willing to make changes to proposed records exemptions when they're shown limits go too far.

For example, Sen. Rod Smith is proposing legislation this year that would block access to crime scene photos or videos. His goal is to protect families from seeing images of their dead relatives in newspapers or on Web sites. He now sees, however, that too much access is denied the way the bill was first written. He said changes will be made.

"I don't believe there is a right to publish for gore at the expense of the privacy rights of families. I believe we need to balance that against open access to evidence in cases. That's what I'm trying to reach," said Smith, D-Alachua and a candidate for governor.

As filed, the bill would have kept the public from seeing a videotape released last month that showed a confrontation between juvenile boot camp guards and a boy who later died.

"Clearly there's a public policy that supports the release of that," Smith said. "I don't want to block legitimate access to information the public has a right to know. This serves as a check on the courts and prosecutors and defense lawyers."

## **Tampa Tribune**

<http://news.tbo.com/news/nationworld/MGBX611GNKE.html>

### ***Annual Debate On Again To Limit Sunshine Law***

By MICHAEL FECHTER [mfechter@tampatrib.com](mailto:mfechter@tampatrib.com)

TAMPA - News organizations want access to crime scene photographs gathered during an investigation into the murder of a little girl.

Businesses interested in moving to Florida fear the repercussions back home if their courtship is revealed.

An Orlando TV station posts on the Web the names and addresses of thousands of people who hold concealed weapon permits.

Twenty or 30 times each year, sticky situations like these produce calls for special exemptions to the state's renowned Sunshine Law - whose "comprehensive breadth and scope," according to an attorney general's analysis, "have served for many years as a model for the rest of the nation."

This weekend, inspired by Florida's example, newspapers nationwide highlight the importance of open government with the kickoff of Sunshine Week. This weekend, too, the Sunshine State and its lawmakers are preparing to consider some 50 proposed exceptions to the state's own Government in the Sunshine Law.

"It is usually some isolated incident, either high profile or not, and there's a knee-jerk response that we need to close access to this," said Barbara Petersen, president of the First Amendment Foundation, a Tallahassee-based organization that emphasizes the public's right to open government.

Sometimes the public's right to know collides with an individual's right to privacy, or a business's right to protect its trade secrets. Calls emerge to remove the material from public view.

Many of them are prompted by isolated but high-profile incidents. Fueling them are concerns that the unregulated nature of the Internet could make sensitive materials available for the world to see.

To watchdogs such as Petersen, there are better solutions that balance the competing interests. Rather than cut off all access, for example, lawmakers could make it easier for crime victims and their families to sue a media outlet or Web site that publishes the material.

### ***Autopsy Photos***

Proposals restricting access to crime victim photographs build upon 2001 legislation prohibiting the release of autopsy pictures. They had been public records for decades.

That changed after the death in the Daytona 500 of legendary race car driver Dale Earnhardt. The Independent Florida Alligator wanted the pictures examined to see which injuries killed Earnhardt.

His widow sued to block the release, and lawmakers rallied to her side with a new law.

"The photographs are humiliating, disgusting and negative," Teresa Earnhardt said during the litigation. "That could be nothing but harmful and painful to anyone involved with my family, my company, our fans, anyone."

Attorney General Charlie Crist, a Republican candidate for governor, made the same argument in court last year in trying to block access to crime scene photographs of 11-year-old Sarasota rape and murder victim Carlie Brucia.

"The utility of these photographs in the public domain was tough to contemplate," Crist said last week.

Media outlets argued it was important to maintain access to all evidence presented to a jury and won a chance to view the files, but not make copies.

State Sen. Rod Smith, a Gainesville Democrat also running for governor, couldn't think of any such pictures published in Florida. But he's co-sponsoring a bill to establish an exemption for crime victim pictures in state law.

The bill calls for access through a judge. That's what state courts ordered 15 years ago, when Smith was Alachua County's state attorney prosecuting serial killer Danny Rolling.

Smith said he was concerned that the pictures might be published by people abroad and that Rolling's girlfriend might try to use them to sell her story for profit.

Smith said his bill would provide "an opportunity for public scrutiny, but the material would not be available for reproduction in any form."

Crime victims didn't ask to have their lives thrust into the public domain, said Sadie Darnell, a retired Gainesville police captain who was the department's spokeswoman during the Rolling murders.

To see their right to privacy sacrificed by their victimization is difficult to accept, she said.

"Clearly it's a revictimization," Darnell said. "It must be weighed. What's the public good?"

The judge's restriction on viewing the Rolling evidence was a bold step. But Darnell said the victims' families were shocked when people lined up at the local courthouse for a chance to view the files.

"It's creepy," she said. "It was unbelievably hurtful to know that their child's photograph was going to be exposed to strangers like a freak show."

Access advocates, on the other hand, including the American Society of Newspaper Editors, argue that even public records such as these need to be available for inspection - and they point to Earnhardt's case as an example.

NASCAR officials originally blamed the death on a faulty seat belt. But the Orlando Sentinel hired an independent expert and won a settlement with Earnhardt's widow allowing him to view the autopsy pictures. He concluded the race driver died when his head whipped violently on impact.

NASCAR later instituted new safety rules, including the use of head restraints to avoid similar fatalities.

### ***Business Records***

Sometimes the sensitive material deals with information a business doesn't want competitors to know. That's why state officials thus far have refused to release information about hundreds of thousands of dollars in tax rebates committed last year to MZM Inc., a business that promised to create 80 new high-wage jobs in Tampa.

MZM's chief executive officer, Mitchell Wade, pleaded guilty last month to bribing a congressman, but officials say an exemption places his request for secrecy above the public's right to see how he qualified for the state incentives.

The exemption, designed to help the state attract businesses while protecting the companies' interests, is up for renewal this year. It prohibits the release of proprietary information such as business plans if a company requests secrecy.

But officials interpret that as blocking the release of any information, including what factors state officials considered in agreeing to the tax breaks.

The governor's office released letters Wednesday canceling the agreement and showing MZM's successor didn't want the state's money. It won't provide MZM's original letter requesting the exemption or any communication that might not contain proprietary information.

### ***Concealed Weapons***

Lawmakers don't always need a real-life example to propose exemptions, said Charles Davis, executive director of the National Freedom of Information Coalition at the University of Missouri.

In Iowa, the Legislature passed a law keeping birth records from public hospitals exempt from public disclosure out of fear someone could use the information to target newborns for kidnapping. There was no evidence that had happened, Davis said.

The move to exempt information about people carrying concealed weapons is another example, he said. It follows a report in November that found the Orlando area is home to more holders of concealed weapon permits than any other part of Florida.

Some permit holders said the posting of their names and addresses on the station's Web site made them targets for home robberies and other threats. The proposed exemption passed the Senate Commerce and Consumer Services Committee on Wednesday by a 7-1 vote.

The First Amendment Foundation listed the bill among five pending exemptions it considers to be the most damaging. The autopsy and crime victim photograph bans are also on that list.

The gun issue involves law-abiding citizens. But they sought the special status of being able to carry a concealed weapon, the foundation's Petersen said. "That special status subjects them to a higher level of scrutiny."

If the exemption passes, the public won't be able to know whether a road rage episode involved a concealed weapon permit holder or whether people who don't qualify somehow sneak through the cracks and obtain permits, Davis said.

"How do you know if the policy is working if you don't have access to the data?" he asked. Parents won't be able to check their daughter's boyfriend to see whether he carries a weapon, Davis said.

"Don't I have a right to know if he's packing heat?" OPEN TO PUBLIC?

### ***Here are three exemptions the Legislature will consider to the state Sunshine Law.***

**1) Concealed weapon permit holders:** Pro - Access to their names and addresses could make them targets for criminals. Con - People have a right to know who is armed.

**2) Crime victim/autopsy pictures:** Pro - Risks of publication revictimize the victims and their families. Con - Examining the evidence can lead to new discoveries.

**3) Economic Development Agency efforts to attract business:** Pro - Protects companies' trade secrets and makes them more willing to come to Florida. Con - Public money is spent with no way to check who gets it or why.

Lakeland Ledger

<http://www.theledger.com/apps/pbcs.dll/article?AID=/20060312/APN/603120644>

and

Fort Lauderdale Sun Sentinel

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

## Florida newspapers push for more open government

By ANDREA FANTA  
Associated Press Writer

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

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

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

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

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

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

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

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

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

"You can't have a democracy without open government," Petersen said. "People use open records every day, even if they don't realize it."

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

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

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

"With the totalitarian model of all-powerful Big Brother in retreat around the world, this is no time to tolerate it here at home," Carter said.

## **The Florida Times Union, Jacksonville**

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

# **41 bills threaten to cloud Sunshine**

**By MIKE GIMIGNANI**

*The Times-Union*

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

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

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

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

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

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

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

Old is new again

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

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

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

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

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

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

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

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

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

Ups and downs

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

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

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

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

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

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

### **Not so open laws**

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

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

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

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

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

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

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

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