



States taking hard look at limiting info

With the federal government already tightening access to what previously was public information, almost one-third (17) of the states are now considering some type of legislative action.

"We're just seeing the first wave," says Paul McMasters, ombudsman for the Freedom Forum, a non-profit foundation dedicated to free press and speech. "Everybody's going to see the potential for closing down meetings and for closing access to a variety of records."

Government agencies recently were ordered by the White House to remove from Web sites and public documents any sensitive information, such as location of nuclear materials, that might be helpful to terrorists. Some of the information in question included nonclassified information that had been available to the public for years.

Seventeen states have taken similar action so far. Florida was among the first, responding last December by closing public records about security plans and drug stockpiles.

One freedom of information advocate cautions that there needs to be a balance between a knee-jerk rush to secrecy and an equally knee-jerk response to keep all records public.

Charles Davis, director of the Freedom of Information Center at the Missouri School of Journalism, adds that the key is carefully to write laws that narrowly define what should be kept secret. "There's an assumption that secrecy guarantees security," says Davis. "That's when I get off the bus."

States that have considered limiting records since last September include California, Florida, Idaho, Illinois, Maryland, Massachusetts,

Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, South Carolina, Tennessee, Texas, Virginia and Washington.

In Idaho, state senators killed a bill in February that would have let judges seal government records currently open to the public. Another bill sent to the governor would restrict public access to buildings or infrastructure records if their release would threaten public safety.

More than half of Florida's daily newspapers have expressed concern about legislative efforts to restrict access to public records and have stressed the importance of maintaining an open government.

Programs combat access tightening

While states everywhere are trying to limit access to records, here in Texas, the FOIFT is doing everything we can to educate the public and our government about the rights guaranteed by the Texas Public Information and Open Records Acts and the importance of keeping information open.

The Foundation has several upcoming workshops open to everyone. Open Government seminars will be presented with representatives from the Attorney General's office and the FOIFT. We have sessions scheduled for the College Station area in June, Tyler on Aug. 9, and El Paso on Oct. 25. There is no charge, but reservations are required.

Our annual state conference is coming up Sept. 20 and in conjunction, we will offer an additional Open Government seminar on Sept. 21. This year's conference titled "Sunshine in Crisis" will focus on the effects 9/11 has had on citizens' access to information.

We also are in the process of setting up two Responsible Rights sessions. These are focused on the citizens' right to access information. We have one session set up in Lubbock on June 6 and are making plans for a seminar in the Valley later in the year.

The Foundation also is in its third year of the First Amendment Institute. First Amendment scholars from across the country come and teach provocative day and a half-long sessions four times a year throughout the state. Those participating in the FAI can receive three hours of graduate school credit and, for Texas attorneys, CLE credit is available.

You can obtain registration forms or information for any of these programs at www.foift.org and click on the Our Programs link.



Government knows law and loopholes

By Wanda Garner Cash
FOIFT President

“Sorry, but you can’t have the bus driver’s driving record because the school district contracts with a private company for transportation services.”

“Sorry, but you can’t look at the purchase orders for those road materials because TxDOT hired a private contractor to repair that stretch of highway.”

“Sorry, if you want to see that offense report, you’ll have to make an appointment with the public information officer.”

“Sorry, you can’t see the list of finalists for city manager or their resumes because the city council contracted with an executive search firm to help fill the vacant position. Besides, all that information is at the search firm’s office in Omaha!”

Because citizens — and sometimes the press — don’t always know what the Texas Public Information Act says or how the Attorney General has ruled on an issue, we accept the bullying denial of access and go away.

And even the savvy few who persist and remind the government body of the legal disclosure requirements face formidable obstacles of time and cost. Sometimes those barriers render the information moot or unaffordable and we also go away.

Furthermore, many government entities believe they can circumvent open government disclosure laws by farming out services to private contractors. “We don’t have that information,” they say. “Our consultants/contractors/headhunters are responsible for those records.”

The definitions section of the Texas Public Information Act, 552.002, plainly identifies public information as that which is collected, assembled, maintained under a law or ordinance or in connection with the transaction of official business by a government body or for a government body and the government body owns the information OR has a right of access to it.

ORD 462, issued in 1987, is the landmark ruling on privatized services. The decision affirmed the threshold question that information collected on behalf of a government body is subject to the Public Information Act. Specifically, these private contractors are carrying out tasks that otherwise would have been left to the governmental body itself. The decision also says that physical custody is not a factor.

The crux of ORD 462 establishes private contractors as agents of governmental bodies and thus makes their records subject to disclosure as provided by the Public Information Act.

We can no longer tolerate such obfuscation of information that is rightfully public.

The Legislature has somewhat strengthened the Public Information Act by tightening the response time in which an open records request is acted upon.

Too often, rejection of information requests and opinions from the Attorney General continue to arrive at the last minute of the legal deadline. Governmental bodies may not know the law but they sure know the loopholes.

Too often, by the time the Attorney General’s office renders an opinion or letter ruling on the information we seek, the point is either moot or tenacious reporters were able to ferret out the information from other sources.

And in many cases, that lag time suits the recalcitrant government agency just fine.

It is just plain wrong for the press or for an individual citizen to endure bureaucratic stalling for what is obviously public information.

What can we do about it? Report it, in our news pages, in our opinion pages, in our commentary. Every time a government agency balks at releasing information, it is incumbent upon us to inform taxpayers and voters. The more light on the subject of public access, the less gets swept into the corner.



We can no longer tolerate such obfuscation of information that is rightfully public.





FORUM

By Joseph Larsen

Joseph Larsen is a Hotline attorney for the FOIFT, and is a member of the Houston firm of Ogden, Gibson, White & Broocks, LLP

Q. What would be the best approach to seek the identity of a renter of a Post Office Box? Are local

postmasters authorized to provide such information?

One can obtain this sort of information only under very limited circumstances. While the federal Freedom of Information Act is specifically made applicable to the United States Postal Service (39 U.S.C. 410(b)(1)), the names and addresses of renters of post office boxes, or of any other postal customers, will be furnished only to (i) a federal, state or local government agency upon prior written certification that the information is required for the performance of the duties; (ii) to a person empowered by law to serve legal process or the attorney for a party on whose behalf service will be made, or a party who is acting pro se where it would be used solely for service of legal process in connection with actual or prospective litigation; (iii) in compliance with a subpoena or court order; (iv) to a law enforcement agency even without written certification in certain circumstances. 39 C.F.R. 265.6.

Not surprisingly, following the anthrax mail attacks of last fall, the U.S.P.S. has rigorously enforced these limitations and has sent out bulletins advising postal employees that disclosure of this information is limited.

Depends on viewpoint

NEW BRAUNFELS - It all depends on your perspective. In this case, it was how and where a councilwoman made her remarks during a meeting in New Braunfels.

Councilwoman Debbie Flume decided she wanted to address the council from the podium instead of the dais. That brought criticism from fellow councilman, Larry Alexander. "I didn't feel she should be talking as a citizen," he said.

Alexander explained his reasoning this way: A separation between the roles of councilmember and public citizen takes place once a person is elected.

Flume said that's not what her lawyer told her some time ago. "He said it is OK not to give up your right as a citizen just because you're a councilmember."

After the meeting, Flume went home and looked up her copy of the 2000 Open Meetings Handbook from the Texas Attorney General's office.

"What I found in Section Five of the Open Meetings Act is that anyone, including members of the governmental body, can raise a subject not on the agenda during citizens' communication," she said.

Homeowners groups not usually subject to Acts

Only homeowners' associations in Harris County and adjacent counties are subject to the Open Meetings Act and the Public Information Act, according to Attorney General John Cornyn.

In his column in which he answers questions, the Attorney General talked about a number of complaints about homeowners' associations.

One homeowner declared: "I think our homeowners' association is mishandling member dues. I have asked to look at the books, but my request has been denied. Do I have a right to know how my dues are being spent?"

"Generally speaking, homeowners' associations are not subject to the Public Information or Open Meetings acts," the AG wrote.

However, a bracket law says that homeowners' associations are subject to the open government laws in Harris (Houston) and surrounding counties. (Any county of 2.8 million or a county adjacent to a county with 2.8 million). The association also must be authorized to make certain assessments.

The AG pointed out that his office does have the power to enforce the Public Information Act, but it does not have oversight of the administrative policies and procedures of homeowners' associations.

"The Open Meetings Act is enforced by the district or county attorney. If you have concerns about the way an association meeting was conducted, you should contact your local prosecutor," Cornyn advised.

Council members fined for open meetings violation

SAN ANTONIO - No contest pleas by three Elmendorf city council members and a former mayor to charges of violating the Texas Open Meetings Act resulted in \$100 fines each. The charges stemmed from a meeting held in November of 1999.

Additionally, the court ordered them to attend either a Texas Attorney General conference on the Open Meetings Act, or an elected-officials seminar held by the Alamo Area Council of Governments.

The Bexar County district attorney's office dismissed a related charge against a former police chief, Paul Moreno, for "insufficient evidence" of wrongdoing.

Bexar County court records indicate the current council members—Richard Ball, Lester Walters, and Esperanza Saucedo—and former mayor Sherry Pena each were fined \$100 and given six months deferred adjudication.



"He said it is OK not to give up your right as a citizen just because you're a councilmember."

—Councilwoman Debbie Flume



School Boards get poor advice, editor says

By Keith Shelton

Advice school boards are getting from their attorneys, particularly in small towns, is often wrong, LeRoy Wilson, editor and publisher of the *Sudan Beacon News*, believes.

For one thing, some school boards don't know how to legally conduct a closed meeting.

"The problem I have is getting them to call the attorney general's office and ask for a clarification. Not an opinion, but a clarification," Wilson explains.

As an example, Wilson said one school board has an open forum

and puts the open forum on the agenda.

"When someone says, 'I need to speak to the board,' rather than say we'll put it on the agenda, they go into an executive session," he said, no matter what they want to speak about.

"Usually, it's a disgruntled parent," Wilson said. If it is a complaint about a teacher, the board can hear the complaint in an executive session, unless the teacher wants it open.

The notice of the executive session has to state what the executive session is about, such as a

complaint about an employee. Any other complaint has to be heard in open session.

"They've got to make clear for the general public what the purpose of the executive session is," Wilson said.

He said his school board puts a general statement on every agenda reserving the right to go into executive session on any item. However the executive session still has to comply with the Open Meetings Law in regard to posting and the subjects that can be discussed.



"The problem I have is getting them to call the attorney general's office and ask for a clarification. Not an opinion, but a clarification."

- Editor LeRoy Wilson



Editors warned to guard against censorship

WASHINGTON - Senate Majority Leader Tom Daschle cautioned newspaper editors at a recent Washington meeting to be aware of efforts to restrict press freedom under the guise of protecting national security.

Daschle spoke at a meeting of the American Society of Newspaper Editors (ASNE) and warned the editors to be on guard against government efforts to censor news or limit access to information.

He praised the editors for their pioneering policy work and tireless advocacy, declaring that were it not for those efforts, "we would not have the Freedom of Information Act."

Defense Secretary Donald Rumsfeld also spoke at the convention and said reporters were being given news about the war on terrorism in a fair manner. He criticized those who claim the Pentagon was trying to censor information.

Van Gee leaving FOIFT for overseas move



Texas.

A late afternoon telephone call on a chilly wintry day in Dallas brought a dramatic change to the life of Sally Van Gee, who for the past four years has served as Education Director for the Freedom of Information Foundation of

Texas. The call was to Sally's husband, Stephen, who recently became Senior Vice President of international operations for the cable division of his company.

The bottom line is Stephen will be headquartered in Germany, and Sally will be leaving the FOIFT in June.

Sally's background before joining FOIFT was in education, as a teacher. But her job with the Foundation has been much broader in scope.

She enjoys coordinating the many educational

programs the Foundation offers.

Success of the First Amendment Institute, now in its third year, is due largely to Sally's efforts.

She's also responsible for much of the FOIFT state conference program each year, working with the Foundation president and board members.

Whenever you see Sally, she's usually on the phone, or on the road. She takes things pretty much in stride. What about crises? She laughs. "Yes, some things don't work out so well." She relates the story of one of two speakers who was snowbound in Missouri and couldn't make it to Dallas for the very first session of the First Amendment Institute.

The other instructor did a great job, Sally recalls.

"That's one of the wonderful things about working with the quality of the instructors we get. They're able to take the ball and run with it because of their professional experience and background," she explains.

Bush actions impact release of documents

An executive order by President Bush last fall has a broad and chilling impact on access to records of previous administrations. His placement of his gubernatorial papers when he was Texas governor from 1995-2000 also has raised a challenge.

Historians especially have been critical of Bush's presidential records policy. A federal lawsuit filed last year by historians and public interest groups challenged President Bush's order.

"There's great determination to prevent these papers from ever becoming public," according to

historian Richard Reeves.

Legislation passed in 1978 called for release of most papers 12 years after the end of an administration. Bush's order gives former presidents more authority to withhold certain records containing military, diplomatic or national security secrets.

On a state level, Bush chose to house his gubernatorial records in his father's George Bush Presidential Library and Museum at Texas A&M University. This is administered by the National Archives and Records Administration and not subject to the Texas Open Records law.

This has various Texas officials pondering a solution, including Gov. Rick Perry; Texas Attorney General, John Cornyn; and the State Library and Archives Administration, which usually handles gubernatorial records.

The Foundation is particularly interested in how things turn out. Foundation President Wanda Garner Cash, also editor and publisher of *The Baytown Sun*, says: "The Foundation remains steadfast in its belief that all the working papers during Bush's gubernatorial tenure are public record and subject to the Texas Public Information Act."



"There's great determination to prevent these papers from ever becoming public."

—Historian Richard Reeves



First Amendment Institute's third year underway

The First Amendment Institute presented by the FOIFT entered its third season this year, with the first seminar held in Houston.

The Institute's 2002 schedule includes seminars in four Texas cities, each with an in-depth look into a specific concept of the First Amendment.

The opening session was presented in March at the law offices of Locke Liddell Sapp LLP, with participants studying the concepts surrounding freedom of the press during a two-day session.

Other seminars were scheduled in San Antonio, on Freedom of Assembly and Petition; in Dallas, on Freedom of Religion; and in Austin, on Freedom of Speech.

The opportunity to take part in the First Amendment Institute is open to all. The class of 2002 includes citizens from a broad spectrum of professions, including legal, broadcast and print media, public relations, academic, government and business.

The First Amendment Institute has been approved to offer continuing education credits to Texas attorneys attending the seminars. In addition, participants who attend all four seminars may earn 3 hours graduate credit through the Department of Journalism, College of Communication at Texas Christian University.

Monson award announced

The FOIFT is pleased to join the Texas Press Association in announcing the Nancy Monson FOI Award.

It will honor journalists and/or newspapers for outstanding efforts that uphold First Amendment principles, increase public access to government, and improve awareness of state open government statutes.

The award is named in honor of Monson, who served as the FOIFT executive director many years, and provided leadership on open government and public access issues until her retirement in 2001.

The FOIFT board hopes the award will enhance TPA's open government philosophy and honor those publishers and editors who fight for public access to government on the local level.

There will be two award categories—daily and non-daily. For additional information, contact Katherine Garner at the FOIFT office, 214-977-6658.

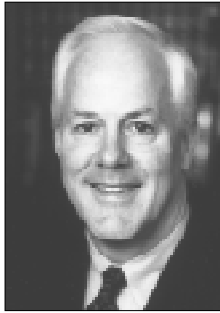
No Mexico meetings, AG says

AUSTIN - An opinion by the Attorney General says that the Board of Regents of the University of Texas System cannot lawfully hold a meeting in Mexico.

The ruling by AG John Cornyn was in response to a question by the Board of Regents.

An AP story says Board Chairman Charles Miller of Houston had proposed that the UT board meet with representatives of a higher education institution in Mexico to observe methods used in that country. The UT system said steps would be taken to ensure openness, including broadcast of the meeting by two-way videoconferencing.

However, the AG said existing Texas law limits the use of videoconferencing as a substitute for in-person meetings.



From the AG. . .

By John Cornyn

Members of the public frequently inquire about procedures that a governmental body must follow in asking my office for a decision under the Public Information Act.

Here are the questions we most often receive.

1. When must a governmental body request a decision?

If a governmental body receives a written request for information and believes that any of the information should not be released, then as a general rule the governmental body must ask my office to decide whether that specific information is excepted from public disclosure. A governmental body is relieved of this requirement only if the requested information is the subject of a previous determination by my office.

2. What is the procedure for requesting a decision?

The Act specifically prescribes what the governmental body must provide to my office and establishes strict deadlines for doing so. The governmental body must first submit a written request for a decision not later than 10 business days after the date of its receipt of a written request for information. The communication must specify the exceptions to disclosure that the governmental body believes are applicable.

The governmental body must also submit, not later than 15 business days after receiving the request, (1) written arguments in support of the exception it claims; (2) either a signed statement of the date of its receipt of the request for information or evidence that sufficiently establishes the date of receipt; (3) a copy of the request for information; and (4) the specific information that the governmental body believes to be excepted from disclosure (or a representative sample if the information is voluminous).

3. Is the requestor entitled to be notified that a decision has been requested?

Yes. Not later than 10 business days after the date of its receipt of the written request for information, the governmental body must send the requestor (1) a written statement that the governmental body wishes to withhold some or all of the requested information and has asked the Attorney General's office for a decision, and (2) a copy of the written communication to my office in which the governmental body requested a decision.

4. What if a governmental body fails to follow these procedures?

If a governmental body fails to timely comply with each of the requirements described above, then the requested information is legally presumed to be public. Generally, this presumption means that the information must be released unless it is made confidential by law or affects the privacy or property interests of a person other than the requestor. In certain instances, this presumption also can be overcome by the interests of a governmental body other than the one that is requesting the decision.

5. Does the Attorney General accept public comments regarding a request for decision?

Certainly. The Act permits any interested person to submit written comments as to why information that is the subject of a request for a decision should or should not be released. Please remember, however, to submit your comments as promptly as possible, so that they will arrive in sufficient time for my office to consider them.

Sunshine in Crisis sets tone for annual state conference

Sunshine in Crisis will be the theme of the annual FOIFT state conference Sept. 20-21 in Austin.

"This year's conference will address security and privacy issues as they impact on open government in a free society," said Randy Sanders, editor of the *Lubbock Avalanche-Journal* and this year's conference chair.

"All Americans are concerned about security issues." He adds, "We also need to remember that the U.S. Constitution cannot be pushed aside as our country protects itself."

As the conference unfolds, Sanders said he hopes those attending will be able to develop a balance between privacy, security and the public's right to know what their government is doing.

The Privacy Paradox is one panel discussion scheduled. Members of the State Privacy Task Force will discuss the committee's focus and offer a look at privacy issues in the 78th Legislative session next year.

Point-Counterpoint: Do we need to close the doors to be secure? will offer varying opinions of the outcomes of closing records for security.

An Open Government seminar will be held Saturday morning.

Reservations at the Inter-Continental Stephen F. Austin Hotel **must be made by Aug. 28 in order to receive a special rate for the conference.** Call (512) 457-8800, or 800-327-0200. When calling, remember to ask for the FOIFT Conference rate of \$109.

Three registration packages are available, with early discount rates if made before Aug. 16. For additional information call (214) 977-6658, or visit the FOIFT web site at www.foift.org.



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LOOK WHAT'S COMING

May

21 FOIFT Board of Directors meeting
Houston

June

6 Responsible Rights: Government in the Sunshine
Lubbock

tba Open Government Seminar
Bryan-College Station
Offered in collaboration with the Office of the Attorney General of Texas and the Texas Association of Regional Councils

21-22 First Amendment Institute - Freedom of Religion seminar
Dallas

August

9 Open Government Seminar
Tyler
Offered in collaboration with the Office of the Attorney General of Texas and the Texas Association of Regional Councils

September

18-19 First Amendment Institute - Freedom of Speech seminar
Austin

19 FOIFT Board of Directors Meeting
Austin

19 First Amendment Institute Graduation Dinner
Austin

20 FOIFT State Conference with James Madison Award presentation
Austin

21 Open Government Seminar
Austin
Offered in collaboration with the Office of the Attorney General of Texas and the Texas Association of Regional Councils

FOI Around the State

Suicide note released

SUGAR LAND - A handwritten suicide note by a former Enron Corp. executive has been released by Sugar Land police following an Attorney General ruling that it was a public record.

The FOIFT and several news organizations had asked for release of the note because of public interest in Enron and its downfall. The note by Cliff Baxter, who killed himself in January, makes no mention of the former energy giant's collapse.

Sugar Land City Attorney Joe Morris asked for an AG ruling because the contents raised what Morris termed "confidentiality issues."

No violation in Snyder

SNYDER - A visiting judge reversed an earlier ruling against the Scurry County commissioners court, declaring that it did not violate the Texas Open Meetings Act.

The decision by District Judge Royal Hart of San Angelo set aside without comment his ruling last Jan. 29 when he denied the county's motion for a summary judgment.

The *Snyder Daily News* filed suit last August, asking a permanent injunction against future violations. The paper contended in its suit that there were violations of the Open Meetings Act during discussion by the commissioners court of management of the Scurry County Coliseum.

Typo cancels meeting

BAYOU VISTA - A typo was listed as the reason for cancelling a recent scheduled meeting of the Bayou Vista city council.

It was posted for Jan. 2, 2001—instead of Jan. 2, 2002.

Grand jury info denied

McKINNEY - The Attorney General's office has denied a request for information presented to a grand jury in the police shooting death of a McKinney woman.

The grand jury "no-billed" the police officer involved in the shooting by declining to return an indictment.

The AG held that information presented to the grand jury did not result in "conviction or deferred adjudication" and therefore the information requested could be withheld from public release.

The city declined to turn over any of the information of the police investigation to a McKinney newspaper or to an investigator hired by a law firm representing the family of the woman fatally shot. The city then asked the AG for a ruling under the Public Information Act of Texas.

Paper wins suit

EDINBURG - *The Valley Morning Star* won a court ruling in its efforts to force the Weslaco Development Committee to comply with the Texas Public Information Act.

WDC officials contended their agency was a non-profit corporation and not a governmental agency required to hold public meetings or provide information to the public about its activities.

The ruling was returned by Hidalgo County district judge Rudy Delgado in 93rd District Court. In the suit filed in late 2000, the paper contended the WDC operated with sales tax money and other public funds.



Sugar Land City Attorney Joe Morris asked for an AG ruling because the contents raised what Morris termed "confidentiality issues."



Board of Directors



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