



Drive seeks recorded votes

Do you know how your legislators voted on allowing the state to seize the homes of some deceased nursing home patients? On provisions about home construction defects and mold? On allowing insurance companies to use credit history in deciding whether to provide insurance?

No, there is not any way you can know because the votes were not recorded.

Out of 1,601 bills passed into law by the last Legislature, fewer than half were decided by recorded votes.

The FOI Foundation of Texas has joined a campaign to require recorded votes in the Legislature.

At the last board meeting, Keven Ann Willey, editorial page editor of *The Dallas Morning News*, described the issue and efforts to change the way the Legislature votes. In response, the board passed a resolution urging the Legislature to change its rules.

The change would require record votes on amendments, second readings, third readings or final passage, the passage of any bill returned from the other house with changes, conference committee reports and joint resolutions that go to the voters as constitutional amendments.

The changes could be made in the House and Senate rules or as a constitutional amendment, which would be more permanent.

Dozens of important and controversial issues were decided by voice votes in the last session, *The Dallas Morning News* reported. Texas is one of fewer than 10 states that do not require recorded votes. Of the 10 largest states by population, Texas is the only state that does not require record votes.

In a Scripps-Howard poll last fall, 84 percent said they agreed that votes in the Legislature should be recorded, and 80 percent favored a constitutional amendment to that effect. And 77 percent said they

would be more likely to support candidates who would support recorded votes.

Citizens have been asked to communicate to their legislators their support of record votes. *The Dallas Morning News* editorial board has offered to provide guest speakers on the subject. The e-mail address is recordedvotes@dallasnews.com.

Open Records office given new muscle

Attorney General Greg Abbott has empowered his Open Records Division to take legal action over open government violations and is in the process of appointing a staff person in charge of litigation.

Abbott said the new powers will enable the office to "aggressively work with prosecutors around the state to ensure that we're going to have more criminal prosecutions when there is noncompliance."

If an open government complaint is legitimate, the AG's office will package a case for the local district attorney where the alleged violation took place and will work with the district attorney on the case or take it over completely if invited to do so by the district attorney.

At the state conference of the FOIFT, Abbott cited the conviction of the Llano school superintendent, who was fined \$1,000 and given six months probation for withholding information on district funds.

The attorney general also said the 43-member Open Records Division had issued opinions at a rate of 30 percent more than in 2002. He said he has worked to reduce the average response time on open records questions to seven business days.



Progress requires diligence

By Joel White
FOIFT President



We have come a long way. Our work has benefited all of the people of Texas. We continue to need your ideas, membership and participation to keep the progress going.



Years ago, *The Houston Chronicle* received a tip that several highly placed and well paid administrators in the Houston Independent School District, who happened to be friends of the superintendent, had obtained their degrees from a mail order diploma mill. Real degrees were legally required for high placed administrators.

The district refused to produce the administrators' transcripts, citing privacy concerns. After more than a year of litigation, *the Chronicle* was finally able to view the transcripts, minus the grades, and to verify that the administrators had received their degrees from a diploma mill.

The district had spent an enormous sum of taxpayer money, successfully delaying the timely release of public information. (We learned the amount through a subsequent open records request.) But the case led to a Texas Supreme Court decision, and ultimately to new legislation, that requires the attorney general to issue rulings promptly.

Progress was made.

In our mission to keep government open to the people, we won't quickly win every battle. Every year brings new challenges to open government. Dozens of bills are introduced each legislative session seeking to exempt public agencies from operating in the open.

The government continues to assign its functions to private companies, who claim they are beyond the reach of open government laws. And there are still some government officials who seem oblivious to the requirements of the Open Meetings Act and the Public Information Act.

But we are making progress. Last year, the FOI Foundation helped to kill the worst of the proposed legislation, such as provisions of last year's anti-terrorism bill which would have failed to define what was secret, and would have left that decision in the hands of government officials.

With help from consumer protection groups and our open government friends in the Legislature, we pushed through legislation that has made previously secret information public, such as arrest warrant affidavits and information concerning homeowners' associations. We have filed dozens of legal briefs in the courts and the attorney general's office on issues such as privatization.

We have continued to educate government officials and the public through programs such as Education for Freedom, the First Amendment Institute, Open Government and Responsible Rights seminars, the Speakers Bureau, and the *FOI Focus*.

We have developed strong relations with government officials who share our mission of open government. And we have helped hundreds of people gain access to public information through the FOIFT Hotline.

When I first got involved with the Foundation, it was still possible for a government agency to sue a requestor merely for making a request. That happened to Robert Lett, who had requested his daughter's school records from Klein Independent School District.

Thanks to the FOIFT, and in particular to board member and past president Rob Wiley, who represented Lett, that is no longer possible.

We have come a long way. Our work has benefited all of the people of Texas. We continue to need your ideas, membership and participation to keep the progress going.

Help support the FOIFT...become a member!

For as little as \$25 a year, you can help the FOIFT continue to bring you the *FOI Focus*. Your membership also supports programs such as our First Amendment Institute, our annual State Conference, the Open Government seminars presented with the Attorney General's Office, and the Responsible Rights: Government in the Sunshine series. Don't forget about the Education for Freedom curriculum that teaches future generations about the importance of the First Amendment. We can't do it without your help. See our Web site at www.foift.org for more details.

Valley survey shows problems

Too many public officials in the Rio Grande Valley do not comply with or understand the Texas open records law, a project conducted by the Freedom Newspapers in the Valley concluded.

The Monitor in McAllen, *The Brownsville Herald*, the *Valley Morning Star* in Harlingen and the *Mid-Valley Town Crier* sent reporters to school districts, police stations, city halls and county courthouses across the Rio Grande Valley. In the project called "Freedom of Information: Your Right to Know," the papers tested public officials by making requests for public documents.

"Many officials refused to turn over records that are clearly public information," *The Monitor* reported. "Out of about 150 requests for public documents, too many were not met in a timely manner as required by state law."

The study results were similar to those in East Texas conducted last year by the *Tyler Morning Telegraph* and the University of Texas at Tyler.

An unscientific survey of 100 Valley residents found that just over half knew they could look at city documents and police reports. Fewer knew they could see the school superintendents' contracts and principals' salaries.

However, officials at several offices realized the importance of the open records act and treated requests for information as part of their job instead of as an intrusion, *The Monitor* reported.

Too many officials regarded the public records as private property and refused to release them, overcharged for the records or asked why the requester wanted the records, which is contrary to the law.

After a *Monitor* reporter asked for public records in Santa Rosa, a police car followed him for 20 minutes. The city of Pharr charged \$62.92 for a copy of the city manager's expense report. A police official in Rio Grande City told a reporter he needed a subpoena to get a public record.

"In many places in the Rio Grande Valley, it's hard for seasoned reporters to get officials to release documents that are clearly public information," *The Monitor* said in an editorial. "It's even more difficult for individuals who don't do this for a living to obtain government records."

A major reason for the project, the paper said, was to make it clear that the law isn't meant for journalists alone, but it is meant for everyone.

"In some cases, the way officials treat ordinary citizens seeking government records is appalling."



"In some cases, the way officials treat ordinary citizens seeking government records is appalling."

- Editorial by The Monitor



Houston attorney elected to lead FOI Foundation

Joel White, a founding partner in the Houston law firm of Ogden, Gibson, White, Broocks & Longoria, has been elected president of the Freedom of Information Foundation of Texas, Inc.

White, a graduate of the University of Texas Law School with honors, specializes in business litigation and media law.

His clients include *The Houston Chronicle*, Fox Television and KHOU-TV, the Belo station in Houston.

Randy Sanders, editor of the *Lubbock Avalanche-Journal*, was elected vice president at a meeting of the Board of Directors Dec. 16 in Dallas. Brett Shipp, investigative reporter for WFAA-TV in Dallas, was elected treasurer; and Keith Shelton, retired from the journalism faculty at the University of North Texas, was re-elected as secretary.

Re-elected to the Board of Directors were David Donaldson Jr, of the Austin law firm of George & Donaldson; Tony Pederson, Belo Distinguished Chair of the SMU Journalism Department; Daniel Russ of the

Austin firm of GSD&M, public relations; Tommy Thomason, chairman of the Department of Journalism at TCU; Paul Watler of the Dallas law firm of Jenkens & Gilchrist; and White.

Newly elected directors are Libby Averyt, editor of the *Corpus Christi Caller-Times*; Gary Hardee, community publisher of the *Arlington Star-Telegram*; Steve Jetton, assistant managing editor of *The Houston Chronicle*; Tim Kelly, editor of the *Beaumont Enterprise*; Joe Larsen of the law firm Ogden, Gibson, White, Broocks & Longoria of Houston; Dale Leach, bureau chief of The Associated Press in Dallas; Gary McClaren of the Lubbock law firm of McWhorter, Cobb & Johnson, L.L.P.; James Sibley of Houston Title Data; Pete Slover of the Austin Bureau of *The Dallas Morning News*; and Nick Voinis of Public Strategies in Austin.

Don Flores, Jack Loftis, John Lumpkin, Cathy Martindale, Don Richards, Kathy Vetter and Stu Wilk moved to the Advisory Council.

The officers and directors took office Jan. 1, 2004.

FOI laws often applied successfully

Problems with information gathering are all too frequent, but almost daily the open government laws are applied successfully by citizens seeking to learn about their government.

Here are a few recent examples:

- County commissioners in Mount Vernon were forced to clarify their agenda after being challenged by the *Mount Vernon Optic-Herald*. The first two versions of the agenda did not list the case to be discussed under the pending litigation exception.

The editor of the *Optic-Herald* objected and Rex Hall, attorney for the Texas Association of Counties, said that if the case was of no special interest to the public, it would not have to be listed on the agenda, according to the newspaper. The editor said it was the public that needed the information. However, the commissioners were reminded that they could be subject to sanctions if the agenda was found to be illegal.

The amended agenda, posted as an emergency item within the two hour limit, listed the case title and number. The paper cited a 1986 Supreme Court case, *Cox Enterprises v. Board of Trustees*, saying general labels such as “litigation” were not adequate.

- In Conroe, three elected officials made settlement agreements with the district attorney over allegations of open meetings violations.

The county judge and two members of the Montgomery County Hospital District arranged separate settlements with the district attorney to avoid trial on the alleged violations, according to *The Conroe Courier*.

- In Orange, a jailer resigned from the Orange County Sheriff’s Office after the *Orange Leader* used the Public Information Act to obtain his service record.

Jailers had subdued a man who later alleged he was beaten. The sergeant had been suspended twice and had been given a “last chance warning” in 1999, according to the paper.

- In Bremond, what began as an attempt by two mothers to find out how tax dollars were being spent in their school district led to an investigation involving law enforcement and state education officials, an Associated Press story reported. The women asked for financial documents under the PIA.

Ledgers showed that monthly checks were being written to the superintendent’s two adult sons, neither of whom lived in Bremond. District funds were used to buy \$300 lifetime memberships in the Texas High School Coaches Association for the sons.

The superintendent’s salary was shown to be more than \$107,000, and two school board members said they thought it was \$87,000, the *Bryan-College Station Eagle* reported.



The editor of the Optic-Herald objected and Rex Hall, attorney for the Texas Association of Counties, said that if the case was of no special interest to the public, it would not have to be listed on the agenda.



School district can’t get juvenile arrest data

A police department may not share information about the arrest of juveniles for underage drinking with a school district, according to an attorney general’s opinion.

The AG was asked if the Grand Prairie police department could provide the Grand Prairie Independent School District on a recurring basis with the names, addresses and dates of citation of each school-age resident of the district.

No, the Family Code prohibits that, the opinion stated.

The City Council and the School Board passed a joint

resolution of mutual cooperation in their efforts to reduce underage drinking.

The school district argued that the information was not “juvenile justice information” under the code and the information could be provided under the interagency transfer doctrine without violating confidentiality.

Also that the Family Code lists information in the state’s database and limits the information made confidential.

Also, portions of the law cover conduct of a child that would be a criminal offense if committed by an

adult.

Underage drinking is not a criminal act if committed by an adult.

All that was rejected.

As for the interagency transfer, the AG opinion said the law provides for specific entities that can receive the information and school districts are not listed.

The school district sought the information before the cases are heard in court so that the school district could intervene earlier in its efforts to steer students away from drinking alcohol. (Open Records Decision 680.)



From the AG. . .

Pitfalls to avoid in seeking records

By Greg Abbott

The Office of the Attorney General is committed to educating all Texans about the Public Information Act. It is especially important for all public officials, including state, county and municipal officials, to adhere to the law because the attorney general is also charged with enforcing the act when someone fails to follow the law. A successful request under the Act is one that triggers a governmental body's duty to respond. The Open Records Division's Education and Enforcement staff have identified five primary pitfalls people make when filing an open record request.

1. Request is not in writing. In order to trigger a duty under the Public Information Act, the request must be in writing. A governmental body may voluntarily choose to respond to a verbal request, however they are under no duty or obligation under the Public Information Act to do so.

2. Request is not for documents or other tangible information already in existence. Governmental bodies are not required to answer questions, perform legal research or comply with a continuing request to supply information on a periodic basis as such information is prepared in the future. The act applies only to information that a governmental body possesses or has access to at the time it is requested. To that end, requestors should also avoid requesting information in the form of a list. If no such list exists, the governmental body is under no obligation to compile such a list.

3. Request was not received by the governmental body. We recommend that all requests be hand delivered or sent by U.S. mail with proof of receipt if possible. Requests may also be made by e-mail and fax, but proof of receipt is critical.

4. Request received by improper party within governmental body. Although we recommend that all requests be addressed to the Officer for Public Information or the officer's designee, requests made by fax or e-mail must be so addressed in order to trigger an obligation under the act. Moreover, requests made by fax must be sent to the fax number designated to receive requests for information under the act, and requests made by e-mail must be sent to the e-mail address of the Officer for Public Information or the e-mail address designated to receive requests for information under the act.

5. Attorney General NOT directly notified when governmental body fails to respond. If a requestor believes that a governmental body has not responded to a request for information as required by the Public Information Act, he or she should contact the Open Records Division Hotline at 1-877-673-6839. If a requestor has a complaint regarding the costs that were either estimated or charged by a governmental body, the requestor must contact Hadassah Schloss with the Texas Building and Procurement Commission at 512-475-2497.

The preamble of the act declares, ". . .the people insist on remaining informed so they may retain control over the instruments [the government] they have created." The public's right to know is the highest principle of a democratic government. As attorney general, my goal is a fully informed public. You may visit our website at www.oag.state.tx.us and click on Open Government for additional resources and information to assist you.



If a requestor believes that a governmental body has not responded to a request for information as required by the Public Information Act, he or she should contact the Open Records Division Hotline at 1-877-673-6839.



Need a speaker?

Need a speaker for a meeting, workshop or conference? The Foundation can help. We have FOI attorneys and media professionals who volunteer their time as a public service. Contact the FOI's Speakers Bureau by e-mailing your request to foift@foift.org or call us 214-977-6658.

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