Ohio Coalition for Open Government

OPEN GOVERNMENT REPORT

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Open-government advocates feeling better about Ohio

By Jonathan Peters

Here comes the sun,
Here comes the sun, and I say,
It's all right.

George Harrison could have written those words about Ohio in recent weeks, as a pair of legal developments have called attention to freedom-of-information issues in the Buckeye State and promise to make state and local government more open.

As one of my friends in the legal world there put it, "Not sure who flipped the switch, but it feels like Sunshine Week … right now."

First, Ohio Senate President Keith Faber, a Republican, introduced a bill last week empowering citizens to challenge public-record

(see **feeling good about Ohio,** *page 3)*

Senate President Keith Faber (R-Celina, left) looks on with Dennis Hetzel of the Ohio Newspaper Association as Governor John Kasich signs Senate Bill 321, which provides an expedited appeals process to any individual who has had a public records request denied by a public office at the state, county and local levels.

Police camera footage must be disclosed

By Jack Greiner

I had the unusual experience recently of arguing two cases before the Ohio Supreme Court back to back. The cases involved the public record status of police cameras. The first case involved an Ohio Highway Patrol dash board camera that captured the pursuit and apprehension of a motorist who was ultimately charged with a number of offenses ranging from a missing license plate to possessing an illegal firearm.

The second case involved a missing license plate as well. In that case, a University of Cincinnati Police Officer, wearing a body camera, pulled a driver over because the car was missing a license plate. That encounter escalated and the police officer shot and killed the driver.

The issue before the court was whether the footage in both cases could be classified as a "Confidential Law Enforcement Investigatory Record." If so, the police and prosecutors would have no obligation to provide a copy of the footage to the public or the press.

For OCOG's extended coverage of police body cameras, see pages 4 to 7

In a 2001 case called State ex rel Beacon Journal v. Maurer, the Ohio Supreme Court decided that an initial incident report detailing the initial interaction between the police and public related to some occurrence is not an investigatory record. The Court ordered the report – which contained detailed written narratives provided by four different police officers — produced upon request, without redaction.

Another way of phrasing the question before the court was whether the Maurer decision would apply to the footage in the two cases. To the extent the reports set forth the events from that interaction, they are no different from the footage. One reflects the observations of police on the scene; the other reflects the observations captured by a camera.

(see **police camera footage** *page 4)*

Inside This Issue

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Yes, we have positive news on public records appeals and open meetings

By Dennis Hetzel, OCOG President

Hetzel

A new law on open records appeals and an impactful Ohio Supreme Court decisions on open meetings are two big, positive highlights of the past few months in the Buckeye State.

Gov. Kasich has signed Senate Bill 321, sponsored and quickly pushed through the Legislature by Senate President Keith Faber, to create a quick, low-cost process to appeal denials of public records' requests had. We now join the majority of states that have some type of statutory process that allows a citizen to easily appeal a denial without having to hire a lawyer and go to court.

For a $25 filing fee, you will be able to appeal through the Ohio Court of Claims, and you should get a decision in less than two months. A special master of that court will attempt mediation. If that fails, a binding ruling will still issue unless the issues are so novel that the court decides to punt to the normal process of litigation. Our hope and belief is that this should resolve many routine disputes and also pressure some agencies to respond faster. Both sides still have the option of appealing these decisions.

The bill had extensive, bipartisan support. Rules and other information should become available in the next few months, and we will keep OCOG members informed.

The bill became kind of a "Christmas tree" for other public records issues. For example, we had no issue with an amendment that will make it easier for private colleges to obey the recent Ohio Supreme Court decision that activities by sworn and commissioned police officers are public records. That's a good thing.

To their credit, both the House and Senate agreed to our amendment to correct a drafting problem that would have made it harder for the courts to even consider awarding attorney fees.

However, some changes were problematic. The House Republicans added language that makes it harder to prove that the courts should award attorney fees to citizens in public records cases. This was wrong and really unfair, particularly because the government still has full rights to argue that the citizen was a frivolous litigator and should have to pay the government's legal fees.

So, here's what we have: The courts can consider awarding fees more often now, but it got harder than necessary to actually receive them. Yes, it sounds like a "Seinfeld" episode. (From the classic "Reservation" episode in which Jerry reserves a car, only no car is available: "See, you know how to take the reservation, you just don't know how to HOLD the reservation and that's really the most important part of the reservation, the holding.") This must be addressed and corrected.

The attorney fee language in the bill started as an effort to correct a problem. For about two years, the Ohio Newspaper Association had been seeking a legislative solution to an Ohio Supreme Court decision in a case, DiFranco v. South Euclid, in which the court made it impossible to collect attorney fees – even if you're right – unless there is a formal court order requiring the release of records. This meant governmental bodies could delay, delay, delay until the last minute, knowing their liability was limited.

Meanwhile, the Ohio Supreme Court ruled 5-2 that a majority of the Olentangy School Board, located just north of Columbus, used email improperly as a substitute for what they should have been deliberating and deciding in a public meeting.

OCOG did a friend-of-the-court brief supporting the school board member who filed suit in the case, ably written by Cleveland attorney Dave Marburger. ONA, the Ohio Association of Broadcasters, Common Cause and the League of Women Voters supported the amicus.

It's an important ruling. However, government officials shouldn't freak out about this case – which already is happening in some corners. They should read the ruling to understand the lengths to which the Olentangy school board went to dodge their obligation.

No one should have a problem with elected officials being able to casually exchange emails and collect information. What the board majority did was exclude the one member they didn't like and use email to deliberate the issue and decide in private. Only much later did they ratify their action in a public meeting, which to me is a sign they knew they goofed.

It ought to be illegal to do this via email just as it's illegal for boards to make decisions in executive sessions. (This is clearly the case in many other states.)The Supreme Court correctly concluded that their actions became a meeting under Ohio

law and sent the case back to the lower court for more consideration.

Not only that, the board's attorney also tried to argue that it was all OK, because the matter they were discussing wasn't public business. Thankfully the court rejected that absurd proposition as well.

Here is a list of what happened with some other bills of interest to OCOG members:

Bills that became law

- Executive sessions: HB 413 made a minor change in executive session exceptions to allow townships to discuss the sale of some property other than real estate. Actions and eventual sales still must occur in public.
- Domestic violence: HB 359 had ONA-supported language that allows domestic violence victims to establish addresses that are kept out of public records to protect them from abusers. ONA worked to narrow the language so that the overall results of the program remain open.

Sampler of open government bills that may see action this fall

- HB 407 requires police to have written, public policies on the use of body-worn cameras but doesn't specify what should be in those policies. I predict you will see a lot of activity on this complicated issue in 2017. The ONA has developed specific positions on body camera legislation that we would be happy to share. Just email me at dhetzel@ohionews.org.
- HB 423 creates a new exemption on records of "call-to-duty" military orders that are in personnel files of public employees. This seems unneeded for several reasons. Backers agreed to a "sunset provision" that eventually would make these orders public.
- SB 227 has a number of changes sought by Attorney General Mike DeWine. It includes a good new provision requiring training of public officials on the open meetings laws as well as open records. Another provision expands "personal information" exempt from records disclosure to include bank account and credit card information.

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Open-government advocates feeling good about Ohio

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denials without the need for a lawyer by paying $25 for the Ohio Court of Claims to resolve the dispute. *(Editor's note: This bill was signed into law on June 28.)* One of its judges would do so after a special master mediated the dispute and issued a recommendation. Faber told The Columbus Dispatch that he expects the entire process, from start to finish, would take no more than 45 days. (Alternatively, citizens could still file a traditional lawsuit.)

The program would likely replace others operated by the Ohio Auditor and the Ohio Attorney General. I discussed them a year ago when the auditor, Dave Yost, a Republican and a former reporter for the long-defunct Columbus Citizen-Journal, announced that his office would start taking complaints about public-records violations by state agencies. The Republican-controlled legislature tried unsuccessfully to kill the program, arguing that it wasn't the auditor's role to monitor public-records law. Eventually, the legislature blinked and Yost went ahead with his program, called Sunshine Audits.

Meanwhile, the attorney general's program offers a free mediation service as an alternative to litigation. Its shortcoming, though, is that it accepts only complaints involving local government agencies, because the attorney general's office acts as legal counsel to state agencies.

Yost and the attorney general, Mike DeWine, support Faber's bill—and so does Ohio Chief Justice Maureen O'Connor. The Dispatch, among others, published an editorial applauding the bill and saying that it would make "it quick, cheap and easy for Ohioans to get a court order to produce denied records." Dennis Hetzel, executive director of the Ohio Newspaper Association, called the bill "a terrific piece of legislation that is going to open up access and information for all Ohio citizens."

Court rules that email thread can violate open meetings law

The other ray of sunshine came by way of the Ohio Supreme Court, which ruled (May 3) that the state open meetings law forbids private prearranged discussion by the majority of a public body's members regardless of the discussion's format—face to face, telephone, video, email, text, tweet, or "or other form of communication."

By a 5-2 vote, the court ruled that a former school board member, Adam White, could sue his old board for violating the state open meetings law. White sued the Olentangy Local School District Board of Education after its president initiated an email exchange with other members about the board's public response to a Dispatch editorial. The editorial commended White for voting against a policy requiring all communications among members and staff to go through the district superintendent or treasurer.

The board president asked the other members, except White, to work with the superintendent and his staff to prepare a response to the editorial. They did so in an email exchange, again excluding White, who sued the board six months later, alleging that it violated the Ohio open meetings law—on the theory that the law prohibited the board from engaging in a private prearranged discussion via email regarding public business.

The court held that "all meetings of any public body are declared to be public meetings open to the public at all times," and that "the distinction between serial in-person communications and serial electronic communications via e-mail … is a distinction without a difference because discussion of public bodies are to be conducted in a public forum." The court also said it would "subvert[] the purpose of the act" to permit government agencies privately to discuss public business by email.

The Ohio Coalition for Open Government, Common Cause Ohio, and the League of Women Voters of Ohio filed a joint amicus brief supporting White's appeal to the state supreme court. Authored by David Marburger, the Cleveland lawyer once depicted in a New York Times dramatization, the brief argued that "the Sunshine Law's democracy-sustaining purpose cannot survive if a quorum of a public body can retreat to their email inboxes" to evade scrutiny and accountability.

The court agreed, and here comes the sun, indeed.

***Editor's note:** For an example of how this email decision is already affecting open government cases, see the Reynoldsburg school board brief on page 15.*

Jonathan Peters is a member of the Ohio State Bar Association Media-Law Committee. Originally published in the Columbia Journalism Review. Reprinted with permission.

Extended Coverage of Police Body Cameras and Open Records

Police camera footage must be disclosed

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But to the extent the question is phrased in that fashion, a related question is: what is the meaning of Maurer? And why did the court find that the record of the initial interaction between the police and the public be available for immediate and unedited public consumption?

The answer is that the manner in which the police conduct the initial interaction with the public speaks volumes about the police's relationship with the citizenry and dictates the level of respect citizens will have for the police. Are police courteous and professional in their dealings with the public or dismissive and confrontational? Do police mete out equal treatment in those encounters? Are certain citizens afforded better treatment? Do police use excessive force or take unnecessary risks in their interactions with the public? Footage of those interactions will answer all of those questions.

And those initial interactions – even the ones at issue in the cases before the court – are not inherently criminal investigations. A car proceeding down the street with a missing license plate could be doing so for any number of reasons – but that fact alone does not make the driver a criminal. And so too the initial stop – which occurs to initially determine the existing facts – did the plate fall off in route; is it in the car; is there some honest mistake – does not constitute a criminal investigation.

If in the course of the initial interaction the facts suggest a further investigation is needed, then those subsequent steps may fall under CLEIR, but the initial interaction and any record of it does not.

That makes perfect sense. Because if the entire interaction is "investigatory" the footage may never see the light of day. And it doesn't take an extraordinary imagination to think of the potential mischief that could result from this scenario. Imagine an Ohio town that is less than friendly to outsiders, especially outsiders with dark skin. Now imagine the police in that town routinely pull drivers of color over and hassle them. The message is clear: "you're not welcome here." Of course, if the police prepare incident reports of these interactions, there would be no mention of hassling, and no indication of the driver's race. All we'd see is a sanitized account in scrubbed language. But if the police in those encounters were wearing body cameras, we'd see what the drivers looked like. We'd hear the officer's tone. We'd observe body language. And as a result, a much more accurate picture would emerge.

But that accurate picture wouldn't necessarily emerge if the footage were deemed "investigatory." The police could hold it as long as they felt like it. In the example I mentioned above, the driver would be an "uncharged suspect" and that would allow the footage (and all the footage like it) to be withheld forever. Which begs the question, how would the press and the public discover and expose the wrongdoing?

And the concern is hardly hypothetical. We saw last year in Chicago the extreme lengths to which the city and its mayor went to withhold the footage of the Laquan McDonald shooting. The footage conveniently remained under wraps until after the mayoral election. Few people consider that a coincidence. And it illustrates how the "investigatory record" exception can be misused to hide truth.

When I argued the cases a camera recorded the argument and live streamed it to the World Wide Web. That footage is available in the Ohio Supreme Court's Web site for anyone to see. And I have no problem with that. I am proud of the work I do and happy to represent my clients to the best of my ability. The world is welcome to watch. And I suspect 99.9% of police – the ones who do their job professionally and courteously – feel the same way about video capturing their performance. The rank and file police – who are unburdened by political ambition – aren't the ones working to shut out the public. That effort comes from a higher pay grade.

Disclosure leads to closure. Non-disclosure leads to chaos. In the cities where riots followed police involved deaths – Ferguson and Baltimore – there was no video of the precipitating incident. In the cities where police involved deaths did not lead to riots – Cleveland, New York and North Charleston, South Carolina – the public was able to see the video of the event. Neither of those examples is a coincidence.

The Ohio Supreme Court got it right in 2001 with the Maurer decision. The Court has a chance now to reiterate the point – the record of the initial interaction between the police and the public is not an investigation. And that includes the video record.

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Greiner

To learn more about Graydon Head, visit www.graydonhead.com.

Bill would make body camera footage public with limits

From The Cincinnati Enquirer

A Republican lawmaker wants most body-worn camera footage to be open to the public with a few privacy exceptions.

The bill, introduced by Rep. Niraj Antani, R-Miamisburg, would require police to release camera footage taken on public property upon request unless it showed a child, victim of sexual assault or personal information like a Social Security number. The video could be released with those people or information edited out.

That means footage, like that taken of a former University of Cincinnati officer fatally shooting Sam DuBose last year, would be available for review even if a suspect is not charged or convicted of a crime, Antani said.

Footage shot in private homes and the private portions of businesses, like back rooms and storage facilities, would be released to the public only if a suspect was convicted or pleaded guilty.

Antani's goal was to protect the privacy of residents in their own homes while satisfying public records advocates seeking transparency in police interactions. The proposal would let counties decide how long video must be stored, but it must be kept for at least one year.

Ohio Supreme Court to decide if police dashcams and bodycams are public records

From The Cincinnati Enquirer

Media organizations and the public should have immediate access to police dashboard and body camera footage, an attorney for the Cincinnati Enquirer argued before the Ohio Supreme Court on (June 14).

The newspaper sued law enforcement officials over two instances where police-recorded video footage was not publicly released until after an indictment or guilty plea.

The court's decision could have wide-ranging implications as more police officers wear body cameras and video of encounters with police go viral.

The newspaper argues police dashboard and body camera videos are public records that initiate investigations, similar to 911 calls. Law enforcement officials argue the videos were part of police investigations and were properly held until the investigations were complete.

The Enquirer filed two lawsuits

1. In January 2015 the Enquirer requested dashboard video automatically recorded when a state highway patrol officer turned her lights on to pursue a high-speed chase on I-71.

   The Ohio Department of Public Safety denied the request, saying the video fell under the public records exemption for confidential law enforcement investigation records. The Enquirer filed suit March 9, 2015, and highway patrol released the videos May 1, 2015.

2. In the second case, the Enquirer and other media organizations sought body-camera video from the July 2015 shooting of Cincinnati resident Samuel DuBose by a University of Cincinnati police officer.

   Hamilton County Prosecutor Joe Deters withheld the video out of concern for the officer's right to a fair trial. Six media organizations sued the state, and two days later, the officer was indicted and the video was released -- eight days after it was first requested.

Attorneys for both sides presented 30-minute long oral arguments before the court on (June 14). Here's what they said.

What did the Enquirer's attorneys say?

Jack Greiner, the Enquirer's attorney made two major points before the court:

- the videos are records that initiate the investigation.
- body-camera video and an officer-generated incident report, considered a public record, are the same record, just in different mediums.

"A record of initial interaction between police and public is a public record subject to production in unredacted form, on demand," Greiner said.

Greiner relied heavily on a 2001 Ohio Supreme Court case that said police incident reports are public records not exempt under the law. In that case, a man called 911 from a cemetery and said he was waiting for police to come and kill him. After a four-hour standoff, the man pointed a gun at officers and an officer shot and killed him.

Justice Paul E. Pfeifer said that case was different because no crime had been committed when police arrived and the incident report began.

"If that's the best case you've got, you don't have a very good case in my opinion," Pfeifer said.

The justices questioned Greiner about what point an investigation begins -- when the police officer turns on her lights, automatically turning on the dash-cam? When the officer approaches a driver missing a front license plate?

They also questioned the Enquirer's suit given that the newspaper received the video requested. Greiner said it wasn't about how much time it took to get the video but whether the video qualifies for the exemption.

What did attorneys representing law enforcement say?

Attorney Andrew Douglas, a former Supreme Court justice, said the investigation begins when the officer turns on the body camera.

Douglas said Deters held the footage because the grand jury was convening and he wanted to avoid "substantial grumblings" in the community seen in Ferguson, Missouri, and Baltimore, Maryland, after black men were killed there by police officers.

"The tape gets released and it goes on Facebook faster than the 6 o'clock news and it's there forever," Douglas said.

He said four of the six media organizations who sued Deters never requested the video from his office. Douglas said the University of Cincinnati and the city should have been sued, not the prosecutor.

In the highway patrol case, Assistant Ohio Attorney General Jeff Clark said the videos documented a moving crime scene and were part of a criminal investigation.

What happens next?

The court can take several months to issue its opinion.

ONA body camera paper

The Ohio Newspaper Association has released the discussion paper "Police Body Cameras – An FOI Battled Headed to Ohio," which is now available for download. To access the paper, go to http://ohionews.org/aws/ONA/asset_manager/get_file/105972

For more about the discussion paper, see the Fall 2015 issue of the OCOG Open Government Report, available at www.ohioopengov.com/open-government-report/.

Extended Coverage of Police Body Cameras and Open Records

Tracking which Ohio police departments use or are considering the use of body cameras

By Renee Gooch,
Ohio Newspaper Association

In the wake of recent use-of-force instances by police officers nationally and statewide, the use of police-worn body cameras has become a hot topic of debate between the media and law enforcement concerning open government regulation laws.

Although the use of the cameras is quickly skyrocketing throughout Ohio, there is still no state-wide law requiring the use of these devices. In addition, there is no state-wide list of which departments use, or are considering using, body cameras.

The Ohio Newspaper Association sent a survey to Ohio newspaper editors asking them which departments in their region use body cameras and their experiences when making open record requests for the videos.

Results showed over 64 percent of respondents having departments and offices in their region of Ohio who use police-worn body cameras, while 47 percent noted the departments in their region had cameras on order or under research.

In addition, over half of the newspaper editors who have filed an open records request for a body camera video have either had problems receiving the footage in its entirety or a timely manner, according to the survey.

"We have been forced to file numerous FOIA requests to view body camera footage," said Rob Todor, the executive editor at the Alliance Review. "Local authorities – police departments, city law director, defense counsel – have no authoritative knowledge of FOIA rulings."

When the Alliance Review made a FOIA request for a body camera video, Todor explained the city law directors were seemingly unsure of the law. In addition, the lawyer for the defendant wanted to bar the publication from viewing the video and the police department deleted some of the video.

"They said it took too much memory," he said.

Rich Desrosiers, the executive editor at the Canton Repository, stated problems the publication has had with turnaround time in receiving footage from the cameras.

"Our initial request was denied as 'overly broad'," Desrosiers said. "Further refinement led to us receiving the records we requested. The total length of time was about a month, which was partly due to vacation and other scheduling issues that probably added one week to turnaround time."

However, according to Desrosiers, local chiefs in his region of Ohio seem willing to discuss their standpoints on the matter.

Police departments already using body cameras	Police departments considering the use of body cameras
Cambridge Police Department	Warren City Police Department
Hubbard Township Police Department	North Canton Police Department
Canton Police Department	Plain Township Police Department
Alliance Police Department	Louisville Police Department
Hartville Police Department	Gallipolis City Police Department
New Richmond Police Department	Northfield Village Police Department
Sandusky Police Department	Beavercreek Police Department
Toledo Police Department	Columbus Police Department
Sylvania Police Department	West Chester Police Department
Waterville Police Department	Dayton Police Department
Sagamore Hills Police Department	Hancock County Sheriff Office
Crestline Police Department	Stark County Sheriff Office
Chillicothe Police Department	Gallia County Sheriff Office
Xenia Police Department	Summit County Sheriff Office
University of Cincinnati Police Department	Washington County Sheriff Office
Cleveland Police Department	Columbus Police Department
Ada Village Police Department	**Note: If any law enforcement agencies in Ohio which either use body cameras or are considing using body cameras are not on this list, email that information to OCOG President Dennis Hetzel at dhetzel@ohionews.org.**
Ohio State University Police Department	
Marietta Police Department	
Cincinnati Police Department	
Erie County Sheriff Office	
Guernsey County Sheriff Office	
Lucas County Sheriff Office	
Wood County Sheriff Office	
Ross County Sheriff Office	
Clark County Sheriff Office	
Williams County Sheriff Office	

Editorial: Relinquish bodycam videos

Editorial from The Columbus Dispatch

Pressure on police departments to adopt the use of body cameras continues, but even as more departments adopt the technology, the rules governing its use and access to the video it records remain very uncertain.But at present, police officials across the state are free to write their own bodycam policies, and even though legal precedent dictates that such videos are public records, some departments have imposed new and unacceptable exceptions to openness.

For example, the Cincinnati Police Department's draft policy says that video of a police shooting is an open record, but video of a DUI stop can be released only with the consent of the county prosecutor.

Hamilton County Prosecutor Joe Deters already is locked in a legal battle with the Cincinnati Enquirer and other local media over the fatal shooting of an unarmed motorist by a University of Cincinnati police officer in July. Immediately after the shooting, Deters refused to release video of the incident, claiming it was an investigatory record, one of the exceptions to the open-records law. He released the video only after deciding to press charges against the officer. The matter is now before the Ohio Supreme Court. The Enquirer and its allies argue that bodycam video is no different in essence than 911 calls and police incident reports, both of which are public records.

Meanwhile, House Bill 407 awaits action in the General Assembly. The bill sponsored by State Reps. Cheryl Grossman, R-Grove City, and Kevin Boyce, D-Columbus, would require any police department that uses bodycams to adopt a written policy about how they will be used and to train officers to comply with the policy.

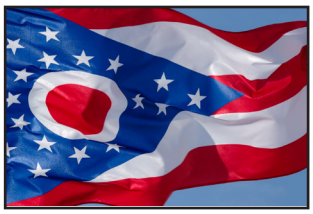
While requiring a written policy is a valuable step, it does nothing to ensure public access to the videos, nor does it require any uniformity in policies from one department to the next.

Leaving the issue to be litigated case by case in the courts also is an unsatisfactory outcome, first because it is agonizingly slow and expensive, and because the result could very well be a murky hodge-podge of decisions that require even more litigation to clarify.

It would be far better for the legislature to act now, while the use of bodycams is in its infancy, to explicitly affirm in state law that bodycam videos are public records.

In October, the Ohio Newspaper Association, the Ohio Association of Broadcasters and the Associated Press published an outline of what is needed. The media agencies called for legislation that explicitly declares bodycam video to be a public record and that establishes uniform statewide openness standards for all police agencies. In cases where portions of a video qualify as exempt from open-records law, the video should be redacted, not withheld entirely, and in the event that new exemptions are deemed necessary, they should be tailored as narrowly as possible. The proposal also calls for the law to provide citizens a means to petition a court for release, ideally without having to hire a lawyer and file a lawsuit. Finally, the proposal calls for permanent logs of archived recordings that can be searched easily.

The point of using bodycams is to increase transparency and accountability for police in order to build public trust. If police withhold bodycam video or erect hurdles to access, these purposes are defeated. The recent civil unrest growing out of police shootings shows where that leads.



Receive Ohio open government legislative watch list with OCOG membership

Interested in open government issues in Ohio? Then you should know that joining the Ohio Coalition of Open Government as a member has a new benefit: The OCOG Legislative Watch List.

The OCOG Legislative Watch List tracks pending legislation in the Ohio General Assembly which may have an impact on state open government issues. The watchlist provides a synopsis on the current status of open government bills, including the pros and cons of the proposed legislation.

The watch list will not take specific positions on pending legislation but will alert OCOG members to legislation which could improve or harm Ohio's sunshine laws. The watchlist will be continually updated during the legislative year.

To join OCOG and receive the OCOG legislative watchlist, see the membership information on the back cover of this issue of the Open Government Report. You can also go to www.ohioopengov.com for more information and to apply.

And don't forget that OCOG's website at www.ohioopengov.com is continually updated with news and information about Ohio open government issues.

Open Government Editorials and Commentary

Federal court rules against media in mugshot case

By Dennis Hetzel, OCOG President

The Sixth Circuit U.S. Court of Appeals in Cincinnati has left only a tiny crack in the door to obtain booking photographs of people accused of federal crimes.

In a 9-7 decision, the court upheld rulings in other federal courts that the U.S. Marshals Service has correctly interpreted the Freedom of Information Act by saying that the FOIA's restrictions on release if the subject has a strong privacy interest outweighs the public's right to see the booking photos.

The Sixth Circuit, which covers Ohio, Kentucky, Tennessee and Michigan, was the last federal court circuit in which these photos could be obtained. The Detroit Free Press led a media coalition to retain that right after the marshals refused to release mugshots of indicted police officers.

Our Ohio Coalition for Open Government was one of the groups filing briefs in the case, with financial support from open government groups in Michigan, Tennessee and Kentucky as well as the Ohio Association of Broadcasters.

OCOG attorney Dave Marburger shared this in an email:

"The only good news was that the court decided to adopt a case-by-case approach in evaluating whether the federal government has the authority to withhold booking photos from public view – as opposed to ruling that booking photos are categorically outside the public right of access under FOIA.

"You might recall that our amicus brief urged the Court not to adopt the government's argument that booking photos are categorically private, although the Court's opinion doesn't mention us in declining to rule that booking photos are always (categorically) outside the public's right of access."

Note that this only affects federal cases, not state ones, although the decision gives aid and comfort to those who would ban access to these photos in state courts. Also, since the marshals are likely to always say "no" when asked for photos, your only recourse will be a lengthy FOIA process and eventual litigation. As a practical matter, the court has slammed the door shut.

What is most striking to me in the decision is how much the justices were swayed by the influence of the Internet and social media, which was not a factor when the FOIA was created of course. Consider this quote from the ruling: "In 1996, this court could not have known or expected that a booking photo could haunt the depicted individual for decades."

The justices specifically mentioned the "mugshot sites" that charge those arrested to have their photos removed and the reality that these photos do not "go away" as they did years ago when they showed up one day in the newspaper or for a fleeting moment on a TV newscast.

As we all know, the Internet continues to change everything it touches. For those of us who believe in open government and responsible journalism, we will have to be increasingly nimble to resist these arguments. On the legislative front, we'll continue to be faced with legislators and voters who want to "do something" about bad online actors, the viciousness of many anonymous commenters and the pervasiveness of the Web.

Get on the transparency train

Editorial from The Beacon Journal

Josh Mandel has been a politician in a big hurry. Shortly after winning the office of Ohio treasurer, he jumped into the race for the U.S. Senate, appearing overmatched by the quest and losing to Sherrod Brown. He since has won re-election, and now, as treasurer, is applying his impatience in a more constructive fashion.

Mandel has been pressing for local governments to follow state offices and participate in OhioCheckbook.com, a website put together by the treasurer's office and designed to allow Ohioans to follow in detail public spending by government entities. The site is a valuable contribution, adding new dimensions of transparency and accountability. As Mandel readily notes, Ohio not long ago ranked among the least transparent states, and now, with this new tool, it is one of the most transparent.

Part of what makes the site effective is the Google-like search mechanism. It is simple, intuitive and comprehensive. The public will find value in such things as the ease in tracking expenditures and making comparisons among local governments.

The city of Stow was the first local entity in Summit County to join OhioCheckbook. Next came New Franklin. The roster now includes the cities of Tallmadge, Cuyahoga Falls and Barberton. All told, 435 local governments (out of nearly 3,300) have committed. On that list are the city schools and the county and city governments in some of the state's largest urban areas, Cincinnati, Toledo, Dayton, Columbus and Youngstown.

The Akron Public Schools, the city of Akron and Summit County are not participants. They should get on board early in the new year.

Mandel has won the commitment of all five state pension systems (four last week). The treasurer has in mind state universities joining next. The pension funds were the target of Mandel jawing in public. That pressure is fair play. If some worry about the miscasting of data for partisan advantage, they have a point. Yet such costs are far outweighed by the public benefit.

For his part, the treasurer is advancing something that features little but upsides. He rightly has talked about the logic of JobsOhio, the privatized arm of state economic development, taking part. Yet he must take care not to lose his way, as he is prone to do, because of opportunism.

As the Dayton Daily News reported, the treasurer was slow to start cajoling charter schools. He now has invited them to post their data. In the spirit of following the public money, he would do well to push for-profit charter school operators to do the same. Mandel may see cover in a recent Ohio Supreme Court ruling. Yet the justices cited the failings of lawmakers, not a clear legal principle about public money somehow turning into private funds.

How about this amount of transparency, Mandel having received big campaign money from for-profit charter operators?

The treasurer wants the public to have a greater chance of seeing how its money is spent. He could not be more right.

State checkbook is a key to government openness

Editor's note: *The state of Ohio has now launched a second "checkbook" website. For more information, see brief item on page 14.*

Editorial from The Vindicator

It's a mantra Ohioans have heard many times, but from our vantage point it never gets old: "I believe taxpayers have the right to know how their tax dollars are being spent."

Those are the words Ohio Treasurer Josh Mandel uses in making his pitch to local governments and school districts for their participation in OhioCheckbook.com, the transparency initiative he launched a year ago.

To date, almost 400 of the 3,962 public entities have committed to join the movement that holds officeholders and others accountable to the taxpayers.

The ultimate goal is to have the financial transactions of every city, county, township, school district, library district and others online so Ohioans can access the information with a click of the mouse.

It was last December that Mandel unveiled OhioCheckbook.com, an easily searchable website that featured state revenue and expenses dating back to 2008.

"I believe taxpayers have a right to know how their tax money is being spent, and I'm doing this to empower the people to hold politicians and bureaucrats accountable," the state treasurer said at the time. "I subscribe to the notion that sunlight is the greatest disinfectant to government waste."

The online checkbook, which took two years to complete and cost $814,000 to build, initially detailed more than $400 billion in state spending from 2008 on – and featured more than 4 billion pieces of distinct spending information. The response from the public was phenomenal, especially when it came to taxpayers perusing the payrolls of departments and agencies.

That reaction from Ohioans prompted Mandel to expand the transparency push to include local governments and school districts. Thus today, the checkbook contains more than $500 billion in public spending.

First among all counties

In April, the treasurer came to Youngstown to announce that Mahoning County government would be the first county operation to put its checkbook online via the state system. Commissioners Anthony Traficanti, Carol Rimedio-Righetti and David Ditzler, Auditor Ralph Meacham and others joined Mandel at the news conference.

"What you're going to see is dominoes fall all across the state because of the leadership from counties like Mahoning County," he said.

Trumbull County government has followed suit.

Mandel's announcement was music to our ears because we have long demanded openness and accountability from local governments and school systems. Despite the straightforwardness of Ohio's public records and open meetings laws, there still are those in the public sector who drag their feet when information is sought by the press and public.

The online checkbook is a godsend for citizens interested in monitoring how their tax dollars are being spent.

On Dec. 2, Mandel returned to the Mahoning Valley to announce online partnerships with Youngstown and Mathews school districts and Austintown, Howland, Liberty, Milton and Bazetta townships.

In Mahoning, Trumbull and Columbiana counties, there are a total of 32 public entities that have joined the movement.

That said, the absence of Youngstown and Warren city governments from the list is noteworthy and troubling.

The outreach across the state began in April when Mandel sent a letter to 18,062 local government and school officials urging them to place their checkbook level data on OhioCheckbook.com.

There have been almost 400,000 searches on the site, which goes to show that Ohioans are hungry for unfiltered information.

Given this heightened public interest, we urge the Ohio Senate to follow the lead of the Ohio House and pass House Bill 46, which ensures that the transparency initiative will survive long after Mandel leaves the treasurer's office. Sponsors of the bill recently testified before the Senate Finance Committee, and we are confident the legislation will be reported out without delay.

The Republican leadership should quickly schedule a floor vote so Ohioans can rest assured that they will have easy access to the financial transactions of state and local governments, school districts and other public entities.

Records denials block agency's oversight

By Darrel Rowland, Columbus Dispatch

Those of us who fight public records battles were struck by how the Ohio Department of Rehabilitation and Correction started messing with the Correctional Institution Inspection Committee, which has the statutory duty of, well, inspecting correctional institutions.

After years of few problems, Reporters Alan Johnson and Randy Ludlow discovered that last fall the state agency started denying even routine records requests with language similar to that used when state officials want to keep the general public in the dark.

For instance, the department denied use-of-force records until the investigation was complete — a dubious rationale to hide information from the public, much less the group charged with investigating such things.

Corrections officials wouldn't even convert information kept by fiscal year into calendar year. That probably conforms with the letter of the law, but really?

A request for "cost-savings initiatives" was deemed too vague to answer. The same response came when the committee asked for any action plans to fix problems pointed out in earlier inspection reports.

Still, one of the all-time take-the-cake responses came when the panel asked for any positive points that prison officials wanted in the report.

They declined, saying the request also was too "vague, ambiguous."

Open Government Editorials and Commentary

A $611,375 lesson on open meetings in Putnam County

Editorial from The Lima News

Anything worth doing is worth doing right. It's a million dollar piece of advice, or at least $611,375 — and counting — for the Putnam County commissioners.

A visiting judge recently ordered Putnam County must pay $611,375 worth of legal fees in the ongoing Road 5 case. Back in 2012, the commissioners decided to use eminent domain to grab 10 feet on either side of Road 5 between Pandora and Leipsic, making a stretch of 11.2 miles 24 feet wide instead of its previous 20 feet.

Some landowners along the path objected, saying they didn't want the extra truck traffic that would come with the wider road.

Unfortunately, the commissioners didn't follow the Ohio's laws to the letter and intent of the law. They skipped a few steps along the way, and the 3rd District Court of Appeals ruled in 2014 the commissioners violated Ohio's Sunshine Laws. "Ignorance appears to have been bliss with this board," Visiting Judge Dale Crawford, of Franklin County, wrote in his ruling.

So what exactly did Putnam County get for this $611,375 payout? More accurately, it's what the public didn't get. The rules included $500 fines for each of the 13 times the commissioners skipped proper procedures involving public meetings:

- The commissioners didn't have a written rule with a general policy regarding meeting notices.
- The county didn't properly notify each landowner about the meetings.
- The county didn't keep full and accurate minutes of the meetings.
- The commissioners improperly entered executive sessions on Feb. 16, 2012, and April 5, 2012.
- The commissioners also didn't have minutes from meetings with the county prosecutor Feb. 21, 2012, or July 12, 2012.

The testimony of one commissioner during a hearing March 30 showed the judge the commissioners just didn't understand Sunshine Law well enough. And that's sad in Putnam County, where all three sitting commissioners have been re-elected at least once. It's especially sad in Putnam County, which had to pay $5,000 in damages and $31,399.74 in attorney fees in 2013 for 17 violations of Ohio's Sunshine Laws involving the board of elections, including eight illegal executive sessions.

Obviously we have a stake in the game when it comes to governments operating in an open and fair way. It's our job to tell you what's happening, and we just can't do that in closed-door meetings with no minutes kept. Executive sessions have limitations on how they can be used. They're not just a tool to exclude the public when things get tense.

Residents of Putnam County should be equally frustrated, though. This $611,375 payout is a sizable chunk of money that could be better spent securing the county, paving the county's roads or investing in better systems for county agencies. Instead, this money — your money as a taxpayer — will line the pockets of lawyers.

Sure, the commissioners could decide in a public meeting Tuesday to appeal. They'll likely lose that too, since they're in an indefensible position. They ignored the laws, and now they'll have to pay the penalty, with your taxpayer dollars.

The cash register is still cha-chinging on this mistake, too. About half a dozen property owners still haven't been paid for their property, although money has been set aside in escrow for what the county believes it will pay those landowners who didn't accept the county's original offers.

It's too late to return Road 5 to its previous condition, as the appellate court noted, it would be a "tremendous waste of public resources."

Public officials everywhere need to read the Sunshine Laws carefully to understand what they can and can't do. Those laws are there for everyone's protection. Yes, they can make government a bit slow and tedious, but that's by design to make sure you're not making another $611,375 mistake.

Court's decision favors sunshine

Editorial from The Columbus Dispatch

(In early May) the Ohio Supreme Court issued a crucial ruling to ensure public access to the discussions and decisions of governmental bodies such as school boards, city councils and the like. Had the ruling gone the other way, Ohio's elected officials would have had a virtual carte blanche to conduct public business in secret.

In White vs. King, the court ruled that email discussions conducted by a majority of the Olentangy Board of Education constituted an illegal private meeting to discuss public business and take a decision on action.

The case dates to 2012, when school-board member Adam White independently investigated two district athletic directors and found that they had made improper expenditures. As a result, one director resigned and both were required to repay the district.

Unhappy with White's action, four of his colleagues approved a policy requiring board members to seek permission of the district superintendent or treasurer before communicating with other district staff members. Shortly thereafter, The Dispatch published an editorial criticizing the board for putting a leash on board members, saying that board members "ought to be free to seek out firsthand knowledge of how their district is performing. Boards would be better advised to make free communication the policy, and then deal as needed with any problems that might arise."

White's colleagues decided to send an official board response as a letter to the editor. But they did not discuss this and make a decision in a public meeting, as required by law. Instead, they, the superintendent, and several other members of the district staff conferred about and composed the letter entirely via email, leaving White out of the process. He filed a lawsuit alleging that this was an illegal meeting of the board that violated Ohio's Open Meetings law. Apparently rattled, White's colleagues held a public vote to retroactively ratify the letter to the editor and to deny that they had violated Ohio's open-meetings laws, actions that indicated nervousness, if not outright guilt.

But two lower courts ruled against White, arguing that conducting business by email did not constitute a "meeting" under state law. Last week, a solid 5-2 majority of the Supreme Court reversed the lower courts, finding that the email consultations and decision were indeed

(see **decision favors sunshine** *page 11)*

Why openness is important in meetings and officials

By Reuben Mees, Bellefontaine Examiner

Trust.

If a public body and its officials want citizens to trust them with their hard-earned tax dollars, the safety of their families and general health and well-being of the community, they have to be open.

People want to know how their money is being spent and why.

And they want — no, they deserve — to know who is spending that money and making the decisions that impact their families, homes and daily lives.

The State of Ohio has a set of laws in place called the Ohio Sunshine Laws that are intended to protect Ohioans' right to know what is happening in their government.

(In early February) a small village in Logan County flaunted those laws.

Specifically, the Rushsylvania Village Council wanted to go into executive session to discuss which of two respectable village residents to appoint to a vacancy on council.

I, as a news reporter for the Bellefontaine Examiner and as an Ohioan who advocates for openness in government, objected to the executive session on the principle that it involved naming one of the people who make laws.

While the Ohio Sunshine Laws are a very valuable tool to protect Ohio citizens' right to know, they are not perfect and are often subject to legal reviews. There are hundreds, if not thousands, of attorney general opinions and court decisions levied on the various issues involving open meetings and public records.

There is one area in particular that I have yet to see a clear and concise opinion on, however.

That is whether a public body has a right to enter into executive session to name a person to its own ranks. That is, can an elected official discuss in secret what would otherwise be decided by voters in an open election.

The law is clear that a public body cannot remove a fellow elected official from office in a secret meeting.

So, my belief in the spirit of the law is that they should not be installed in secrecy either.

Various lawyers have agreed or disagreed with my opinion on the matter, but I have yet to see case law clearly spelling it out.

The argument hinges on whether an elected official is an employee of the public agency. My opinion is that they are not employees but they are the public entity itself.

So that leaves it up to lawyers to decide what will be done.

In the case at Rushsylvania, the village's lawyer is new to the job and was not equipped with a ready answer. She asked for up to a week to look into the legal issue. Council begrudgingly granted that week reprieve.

The law does say, however, that executive sessions are only an option. Barring situations where federal law prohibits release of certain information, a public body is always allowed to discuss an issue in public, which is referred to as erring on the side of openness.

The nice thing about erring on the side of openness is that it can very rarely get a public body into trouble. An error on the side of secrecy, however, can warrant a $500 fine and other penalties.

The only reason the Rushsylvania Village Council had for going into executive session on who would be the next council member was to iron out how they were going to vote before they did so.

It was clear both candidates appeared qualified for the job, had submitted resumes for the position and had addressed council briefly. What council members wanted was a chance to gauge how the other members would vote and cast their own votes accordingly. And that smacks of everything the open meetings law is intended to guard against.

So after granting their lawyer a reprieve to look into the issue, council was facing a week in which they could have gone behind the back of the law and gauged each other's opinions in one-on-one encounters — also a no-no in open government.

But the leaders of Rushsylvania didn't even have the decency to do that.

Instead, they adjourned their meeting and nervously hovered about the table as I intentionally stalled for one or more them to leave. They continued to hover about their chairs. It was clear they wanted me — the only representative of the public at the meeting — to leave the room and leave them alone.

So, I did leave, but I intentionally left the door open on my way out. No sooner had I crossed the threshold of the room and the door slid shut. I didn't even have to leave the foyer (for want of a better word) before the illegal meeting began. I pulled up a spot on a five-gallon bucket and listened as they proceeded to discuss the very thing they agreed not to.

It was appalling, to say the least … a slap in the face to everything that open government is supposed to protect. They could have at least given their lawyer a week to make a recommendation.

Watching the elected officials filing out of the room was shameful — heads hung low when they realized the reporter sitting outside the whole time had caught them in the act.

If I were a vindictive person, I might request that a court impose a $500 fine on the Rushsylvania Village Council for violation of the open meetings law, but that serves no purpose other than to waste the hard-earned money of the Rushsylvania taxpayer whose interests I try to protect.

Instead, I'll let this be a warning that the public does care what happens behind closed doors — even in small towns like Rushsylvania.

Decision favors sunshine

Continued from page 10

a meeting. The high court ordered the trial court to reconsider the case consistent with this ruling.

Had the Supreme Court affirmed the rulings of the lower courts, the result would have been dire for the right of the public to monitor the actions of government. As attorney David Marburger wrote in a friend-of-the-court brief, had the lower-court rulings been allowed to stand, all public bodies would be free to do what the Olentangy school board did.

"Public bodies, by design are policymakers," he wrote. "If they can deliberate and decide issues via email, then later go through the sham exercise of 'ratifying' those earlier decisions, then the Sunshine Law is, as a practical matter, a dead letter…"

Marburger is right, and the importance of this ruling by the court can't be overstated. It is possible that much public business already is being conducted by elected officials via email, phone, text and other forms of communication. If so, those officials now are on notice that this is illegal. And those who suspect this is happening and want to bring it to light now have the law on their side.

White, the Olentangy school-board member who brought this lawsuit, not only has served his school district well, he has benefited all Ohioans.

Open Government Coverage from Ohio Newspapers

Sunshine in Schools: Here are the public records you can request from your school

By Kelli Young, Canton Repository

School districts process hundreds of documents each school day, many of them with information that drives officials' decisions about how to educate Stark County's children.

Much of that information, especially if the school is funded by taxpayer money, is open to you, the public. And if you're a parent, you have access to even more information.

"The general rule is everything that is documented in the public office is a public record unless there is an exception where some federal or state law protects it," said Columbus attorney Mark A. Weiker of Albeit Weiker, who specializes education law and advocates for students and parents

Weiker, who previously served as defense counsel to traditional public schools in Ohio, encourages parents of children under age 18 to review their child's school file at least once a year. By doing so, parents can determine whether any information in their child's file is inaccurate, misleading, incomplete or in violation of their child's rights. Parents also can then seek to correct the information or, at least, attach a note to the file stating their objections to the information they believe is incorrect.

"A lot of parents do that with discipline records," Weiker said. "They can't get the discipline changed, but they can place their own statement in there."

He said most of the school districts have been responsive to his public records requests.

THE LAWS

Ohio's Public Records and Open Meetings laws: Collectively known as "Sunshine laws," they are found in the Ohio Revised Code (sections 149.43 and 121.22) and give Ohioans broad access to public school and government records and meetings, except in defined situations.

Family Educational Rights and Privacy Act of 1974: FERPA applies to all school districts, including some private schools, that receive federal funds under programs administered by the U.S. Department of Education. The law requires that parents have access to their child's education records, and districts could face penalties or sanctions for failing to provide access.

Ohio Student Records Privacy Act: Found in the Ohio Revised Code (section 3319.321), the law restricts the release of student records for people who are not the student's parents.

Individuals with Disabilities Education Act: IDEA provides additional privacy protections beyond FERPA for students who are receiving special education and related services. It applies to all students with disabilities, including those who are placed in or referred to a private school or facility by a public agency and to those receiving special education and related services from a public agency.

EXAMPLES OF SCHOOL RECORDS OPEN TO EVERYONE

- Contracts awarded to a business or individual for the purchase of a service or item.
- Directory information of students, such as the type of information that may be contained in a school yearbook or athletic event program. School districts designate what they consider directory information and must give parents the option of opting out of the disclosure. For the Canton City School District, public directory information includes student's name, address, telephone number, birth date, place of birth, participation in officially recognized activities and sports, achievement awards or honors, weight and height of athletic team members, major field of study, dates of enrollment and date of graduation. Unlike with most other public records requests, school district officials can ask the person requesting the information about how the information is intended to be used as state law prevents the release of the directory information for use in a profit-making plan or activity.
- Emails to and from school employees that pertain to school business. Records in employee private email accounts used to conduct public business also are subject to disclosure.
- Employee contracts for teachers, athletic coaches, custodians, bus drivers, administrators, the superintendent and more.
- Financial documents such as budgets, monthly and yearly statements, financial forecasts, expense reports, payment vouchers and invoices.
- Forms and applications, such as employee hiring documents.
- Employee performance evaluations, including the superintendent's annual evaluation.
- Employee travel expense forms.
- Internal investigative records, such as when a school investigates a complaint against an employee.
- Personnel files. Information such as Social Security Numbers, workers' compensation documents and medical records will be excluded or redacted from the release.
- Policies established by the school board, such as the district's rules on what's considered tardy and an unexcused absence, its dress code and its disciplinary procedure (often available online through the school district's website).
- Roster of employees.
- Salary information of personnel, including teachers, staff, athletic directors, principals, administrators, treasurer and the superintendent.
- School board agendas, meeting minutes (both in a draft and final form) and board resolutions.
- Test results by grade level, school building or district. Report cards for each school and each school district also are available online through the Ohio Department of Education.

EXAMPLES OF RECORDS OPEN TO PARENTS

(Applies to parents of children under the age of 18.)

- All the previously mentioned records that are available to the public.
- Your child's cumulative file, which contains his or her personal identification data, possible academic achievements, teacher reports, report cards, immunization records and disciplinary records.
- Your child's discipline file, if applicable. Some schools may maintain a separate file regarding discipline issues.

(see **here are the public records** *page 13)*

Ohio's public universities often balk at providing public records

By Will Drabold and Danielle Keeton-Olson for The Columbus Dispatch

Nearly half of employees at Ohio's public universities who were asked to provide public records failed to follow state law, according to results of a public-records audit conducted by student journalists.

In January, student journalists across Ohio requested the same five public records at 12 of Ohio's 14 public universities. They asked front-desk employees for records and did not identify themselves. State law does not require those who request records to identify themselves.

Of the 60 total requests that auditors made across the campuses, school employees followed the law for 34. The vast majority of those requests were directed to universities' legal offices without the employee immediately providing the records, a technically legal response. Records were immediately provided in only seven instances.

The remaining 26 requests were denied or obstructed, meaning that university employees asked auditors to identify themselves or otherwise made it difficult to obtain a public record.

In violation of state law, nearly half of auditors were asked to identify themselves. Some were directed to legal offices after refusing to identify themselves; others were blocked from access to public records.

In 2014, The Dispatch successfully requested one record — the names of students who committed violent crimes — from state universities. But two years later, in this audit, three-quarters of universities denied or obstructed a request for that record.

At Ohio State University, an auditor was asked why he was making "such an unusual request" for the violent-crime records and was told later that the office would see whether the record "could be released."

"The results show that state university officials have some work to do to ensure they readily comply with open-records laws," said Dennis Hetzel, president of the Ohio Coalition for Open Government and executive director of the Ohio Newspaper Association. "I was particularly distressed to see so many requests obstructed by asking the requesters to identify themselves. That's clearly against the law."

Chris Davey, a spokesman for Ohio State, said he believes the university did "fairly well" in the audit and that university officials do "everything we can to comply with the public-records law." He said that asking auditors to identify themselves is not "a per se violation" of the public-records law.

The offices of Ohio Auditor Dave Yost and Ohio Attorney General Mike DeWine, both of whom have units dedicated to public records, declined to comment.

At Miami University, all requests were either obstructed or denied. At Ohio State and Ohio University, some requests were obstructed. No university provided all the records requested.

At some universities, auditors were told that violent-crime information could not be released under the federal Family Educational Rights and Privacy Act.

"Given that there has been extensive nationwide publicity to the need for greater transparency in how colleges handle sexual assault, the fact that university employees … are incorrectly citing (FERPA) to conceal violent crimes is simply inexcusable," said Frank LoMonte, executive director of the Student Press Law Center, a Washington, D.C.-based nonprofit.

"These laws need real teeth and real consequences for noncompliance."

Some legal experts also questioned the trend toward directing auditors to legal offices.

"(That) seems inefficient, and frankly can be rather intimidating to many people who are not trained journalists," said Aimee Edmondson, an associate professor of journalism at Ohio University and a media-law scholar. "I'm not sure you need a lawyer to fill all requests. In terms of time management, it's the most expensive way to comply with the law."

This audit's results contrast with a 2014 audit of Ohio's cities, counties and school districts. That project found roughly 90 percent compliance among public employees.

LoMonte, Edmondson and Hetzel said universities need to better train their employees to handle public-records requests.

"The Ohio attorney general's office has excellent training on public records," said Hetzel, the Ohio open-government advocate. "These schools should assess if refreshers are needed, especially at Miami University and Cleveland State, where auditors reported all requests were obstructed."

Here are the public records you can request from your school

Continued from page 12

- Your child's compliance file, if applicable. A compliance file typically applies to students with disabilities and may contain records that the school system used to demonstrate it met the timelines, notification, and consent regulations required by the Individuals with Disabilities Education Act. Not all school districts choose to keep the records in a single file.
- Your child's confidential file, if applicable. A confidential file typically applies to students with disabilities and may include reports written as a result of the school's evaluation, reports of independent evaluators, medical records, summary reports from evaluation team and eligibility committee meetings and your child's Individualized Education Program. Not all districts maintain these records in a single file.
- Videotape that captures information specific to your child, such as a fight on a school bus. Exceptions apply.

EXAMPLES OF RECORDS EXCLUDED FROM RELEASE

- Notes by teachers, counselors and school administrators that were made for their personal use.
- Copies of emergency response plans and other security records.
- Records protected by attorney-client confidentially.
- Records shared during an executive session of the school board. Personally identifiable information of a student that could be used to make a student's identity traceable. Parents and certain officials and entities as defined by law are exceptions.

OHIO ROUNDUP

Unless indicated, all articles excerpted from state and national news sources. For continually updated open government news, go to *www.ohioopengov.com*.

Public benefits from Ohio's competing budget checkbook websites

By Jason Sanford,
Ohio Newspaper Association

Ohio Treasurer Josh Mandel was the first to launch a website putting all state expenditures online, with OhioCheckbook.com going live in 2015. But in June of this year Gov. John Kasich's budget office launched its own Ohio Interactive Budget website at www.interactivebudget.ohio.gov.

Both sites offer detailed state budget information, allowing the public to search an interactive state budget by agency or vendor to learn how taxpayer dollars are being spent. However, there are differences between the sites.

In addition to state budget information, Mandel's site also offers budgets from hundreds of local governments and school districts across Ohio (with more being added each week). The site from Kasich's budget office, meanwhile, details state revenue, the level at which money was initially appropriated by the General Assembly, and any later changes to those appropriations. The site also breaks down where the state's money came from, such as from the sales tax or federal grants.

There has been disagreement between Kasich and Mandel's offices over who should release this budget information to the public through an easy-to-use website. However, despite these disagreements there is one big winner in this competition to release state budget information: The citizens of Ohio.

Yost: First year of Sunshine Audit Program a 'small but significant success'

From Gongwer

In the Sunshine Audit initiative's first year, the state auditor's office investigated 16 complaints about public entities not releasing public records, Auditor Dave Yost announced (March 21).

Launched last year during Sunshine Week, the program was designed to give citizens a way to appeal rejections of public record requests without having to go through a long legal process.

"We didn't have a whole lot of takers," Mr. Yost said at a Statehouse news conference, calling the initiative's first year a "small but significant success."

The office investigated 16 complaints and declined to investigate one because it was too complex, he said in presenting the report on the program's first year. The office only audits complaints that are expected to take fewer than five work hours for staff.

"While I don't think that there's necessarily huge noncompliance, I know that there's more than the 17 cases that we have here in our first year," Mr. Yost said. "I would hope that folks who feel like they've been wrongly denied public records would avail themselves of the mediation process that's in the attorney general's office and our compliance work in the Auditor's office."

For cases involving local government entities, the complainants are first required to attempt the mediation process through the attorney general's office. For those involving state agencies, the complaints start with the auditor's office.

The program stirred some controversy when it was introduced last year. Some legislators said they didn't believe the state auditor had the authority to look at public records compliance, and inserted language into the budget bill (HB 64) to try to stop the program. The language was later removed.

DeWine releases new Open Records Manual

From Gongwer

Attorney General Mike DeWine also marked Sunshine Week by releasing the 2016 edition of his office's manual regarding public records laws, commonly known as the "Yellow Book."

"A substantial number of public records disputes arise because one of the parties involved is not aware of their obligations when a request is made," Mr. DeWine said in a statement. "The 'Yellow Book' is published to help requesters understand their rights and for government agencies to understand their duties under Ohio's Sunshine Laws."

The AG's office also announced training sessions on public records across the state, which are also available as an online video course.

To download the manual, go to www.ohioattorneygeneral.gov/yellowbook

Information lacking on juvenile justice in Ohio, report says

From The Columbus Dispatch

Fewer than half of Ohio's county juvenile courts provided a public report on the number and type of cases they handle, despite a state law requiring it, according to a nonprofit advocacy group.

The Juvenile Justice Coalition of Ohio contacted the juvenile courts in all 88 counties last year and found that fewer than half had a publicly available report on their cases.

State law requires each juvenile court to prepare such a report annually and file it no later than June with its board of county commissioners.

The Juvenile Justice Coalition's report calls the lack of data "disturbing" and renews the group's recommendation for Ohio to implement a comprehensive, statewide juvenile-justice data collection system.

"We're spending millions of dollars – we don't even know how many million – on juvenile justice without knowing if we're getting what we're paying for," said Erin Davies, the coalition's executive director.

Coroner, attorney general refuse to release final autopsies in Pike County killings

From The Columbus Dispatch

Pike County authorities and Ohio Attorney General Mike DeWine refused Tuesday to release the final autopsy reports of eight Rhoden family members who were shot to death in April, something which public-records experts say is a mistake.

Pike County Coroner Dr. David Kessler first denied The Dispatch access Friday night and again on Monday, and then wrote in an email Tuesday that he considers the autopsy reports "confidential law enforcement investigatory records." He wrote that their release "might impede the criminal investigation or the families' grieving process."

The coroner offered no case law that gave him the authority to withhold the records, but DeWine's office later cited a 1984 Ohio Supreme Court case in which the court ruled that autopsy reports in a homicide investigation are confidential. The office also cited a section of the Ohio Revised Code that references a coroner's exemption for records that are considered confidential as part of a law enforcement investigation.

"We believe the law says they do not have to be released," DeWine said. He said case law protects such reports for a reason.

Their release, he said, "would damage our ability to solve this case. Our ability to judge the veracity of information coming in, our ability to judge the credibility of information coming in, all goes away once that is public."

Dispatch Editor Alan D. Miller disagrees. "While we respect what the authorities are saying about the investigation, we see no evidence that this would be disruptive to their investigation, which at this point seems to be going nowhere. Nor have we seen examples of the release of such information affecting similar cases in the past," Miller said.

"Is it conceivable that great public knowledge could help them solve the case? That's possible."

Miller said this case – and the papers request for the records – is not about the media. It's about public access to information.

"We have great respect for the authorities and the work they're doing to try and solve this case. We also believe the law says these records are public, and the attorney general and Pike County authorities don't get to choose what laws they follow."

Reynoldsburg school board emails may violate law

From The Columbus Dispatch

Government bodies might be breaking Ohio's open-meetings laws if they deliberate via email, out of view of the public.

Before the issue was clarified in early May by the Ohio Supreme Court, some members of the Reynoldsburg Board of Education deliberated at length using email. A few times, they even discussed how they would vote on major issues.

"I think in hindsight, with the Supreme Court saying specifically that email communication is not exempt, we could've used better judgment," board President Joe Begeny said (June 23). "We've been more judicious" about using email since the ruling, he said.

Between March and May, Begeny, Vice President Rob Truex, member Debbie Dunlap and, sometimes, member Neal Whitman emailed each other dozens of times about how long to extend a new contract with a charter school, how to deal with a janitorial contractor that they say was doing a poor job and what to do about potential overcrowding at a high school campus.

Ohio Supreme Court: Details of legal work done by outside firm for city not public record

From Ohio Court News

When attorney-fee billing statements with detailed information about the tasks undertaken by a law firm representing a city are intertwined with summaries of the legal work performed, the detailed information is not a public record, the Ohio Supreme Court ruled (May 17).

The Supreme Court voted 5-2 to affirm a Ninth District Court of Appeals decision to release redacted copies of invoices from a law firm representing Avon Lake to James E. Pietrangelo II. The records are connected to pending litigation between Avon Lake and Pietrangelo. In a per curiam decision, the Court majority reasoned that Pietrangelo may acquire information useful in his litigation strategy against the city if provided more details than what the Ninth District permitted to be released.

In a dissenting opinion, Justice Sharon L. Kennedy wrote that only the narrative summary portion of the bills describing the work the firm did can be withheld and that Pietrangelo is entitled to more information as well as damages from Avon Lake.

Attorney general launches new website, initiative to protect consumers

From The Akron Beacon Journal

Ohio Attorney General Mike DeWine on (June 3) announced a new website and media campaign to educate consumers against scams.

The new site, www.ohioprotects.org, will be a one-stop shop for consumers to learn about scams, research businesses and file a consumer complaint. It will also connect to the attorney general's site, but is more focused on consumer needs, DeWine said during a morning news conference to announce the new initiative.

The agency is using $2 million, money the agency has received from lawsuit settlements, for the initiative. It will include three video commercials highlighting scams and will air in all Ohio markets in various mediums, including television, online, radio and cinema ads, DeWine said.

Complaints of government fraud often kept confidential

From The Columbus Dispatch

Ohioans who want to check out their school district or city won't learn much from a fraud-complaint database maintained by Auditor Dave Yost.

Since lawmakers mandated the list – and limited, specified information – be placed online in 2012, the auditor's office has received nearly 2,500 complaints.

However, nearly 1,500 of the complaints, or 59 percent, are considered confidential by Yost's office since they involve investigations, both current and completed.

Every complaint marked as "in progress" or referred to another agency for a closer look reveals nothing about which governmental entity is involved or the nature of the suspected wrongdoing.

"While we are strong advocates for transparency, we also have a responsibility to follow state law governing law-enforcement records and protect information that must be shielded from disclosure," said Ben Marrison, Yost's spokesman.

The fraud-reporting program that allows tips to be submitted online or through phone calls and emails has led to millions of dollars in audit findings for recovery, criminal convictions and civil actions, he said.

OHIO ROUNDUP

Unless indicated, all articles excerpted from state and national news sources. For continually updated open government news, go to *www.ohioopengov.com*.

Ohio Wesleyan faculty meetings no longer open to student newspaper

From The Transcript

After more than 35 years, faculty meetings will no longer be open to reporters.

On April 18, Ohio Wesleyan faculty members voted to disallow The Transcript, the school's independent student newspaper, from attending future faculty meetings.

Bob Gitter, professor of economics and a member of the faculty's Executive Committee, presented the motion. Faculty asked the Executive Committee to reconsider the issue of banning The Transcript's attendance, according to the faculty meeting agenda.

Gitter read the agenda and said, "Faculty meetings will not be open to reporters and a new mechanism in the form of a faculty meeting summary will be made available to the public within 24 hours after the end of the faculty meeting."

Gitter then called for executive session, which was supported. The vote was 47-21 in favor of the motion.

"It has a chilling effect on what people are willing to say if they feel the comments are going to be published in the newspaper," he said.

Butler County prosecutor loses in Enquirer legal fees case – again

From The Cincinnati Enquirer

Butler County Prosecutor Mike Gmoser clearly does not want to have to pay attorneys who work for The Enquirer. But now he may have to.

The situation stems from the case of Michael Ray, who is in prison in connection with the death of his stepfather on Father's Day in 2012.

The Butler County Sheriff's Office released an incoming 911 call from the day of the killing. But Gmoser denied The Enquirer's request for the recording of an outgoing call a 911 dispatcher made, saying it would affect the suspect's right to a fair trial.

Ray, who has since been convicted of murder, told the dispatcher, "I'm a murderer, and you need to arrest me."

He said he had stabbed his stepfather after the stepfather had found Ray drinking.

Gmoser later asked the judge assigned to the case to block the release of the recording, which the judge did.

The Ohio Supreme Court criticized Gmoser's actions, saying it "only served to saddle The Enquirer with more litigation and more attorney fees."

"Those tactics," the Supreme Court's opinion said, "do not demonstrate good faith by the prosecutor's office."

The Enquirer sued successfully, and the court ruled the prosecutor must pay $25,462.80 of taxpayers' money for The Enquirer's attorney fees.

Gmoser does not want to pay them. So he appealed, claiming the amount was excessive.

He lost, in a ruling handed down (in early April).

Now, The Enquirer is asking for more money in compensation for the additional litigation caused by the prosecutor's appeal.

Enquirer Attorney Jack Greiner said Gmoser's appeal was frivolous.

Ohio again top state for spending transparency

From The Columbus Dispatch

Ohio has repeated as the top state for public spending transparency, according to an annual report today by the U.S. Public Interest Research Group.

"Following the Money 2016" ranked Ohio No. 1 for the second year in a row, largely as a result of OhioCheckbook.com, the online spending database hosted by state Treasurer Josh Mandel.

Ohio was one of four states to achieve a perfect 100-point score on the U.S. PIRG report, but was ranked first due to additional criteria. Also receiving perfect scores were Michigan, Indiana and Oregon. California, Alaska and Idaho received "F" grades and were at the bottom of transparency rankings.

U.S. PIRG based its ratings on the state websites and how easy, or difficult, it is for taxpayers to get detailed information on government spending.

Ohio got high marks for adding municipalities, other local government entities, and schools to the OhioCheckbook.com website. Of the 3,962 local government and schools in Ohio, about 650 have signed up for the online checkbook, Mandel said in a conference call this morning.

Ohio's auditor gets legal OK to audit university foundations

From The Columbus Dispatch

State Auditor Dave Yost has received legal approval to perform financial audits of Ohio college and university foundations, which raise and spend hundreds of millions of dollars annually.

A legal opinion from state Attorney General Mike DeWine, dated (April 6), concluded that state law permits Yost to audit the foundations because, even though most of them are private, nonprofit corporations, they collect money on behalf of and distribute money to public colleges and universities

DeWine said in the opinion that the auditor has the right to audit the foundations because they are "established by the laws of this state for the exercise of a function of government, and are therefore, a public office."

Yost sought a legal opinion from DeWine after encountering objections from some state universities about whether their respective university foundations are subject to review by the auditor. Youngstown State, in particular, raised an objection and hired legal counsel to oppose the auditor.

"We decided it was best for all parties to seek clarity from the attorney general about the auditor's ability to review the financial operations of university foundations," said Ben Marrison, Yost's communications director.

Yost said in a statement: "We are

pleased, but not surprised, that the attorney general agrees that these funds – collected on behalf of universities to benefit universities – are public dollars and subject to the scrutiny of state auditors."

Democrats again target JobsOhio for transparency

From The Columbus Dispatch

Democrats are making another run at reforming JobsOhio.

A pair of House Democrats (on March 31) introduced a bill to bring more transparency to the operations of Republican Gov. John Kasich's privatized economic development agency.

The "Ohio Jobs Guarantee" from Reps. Greta Johnson, of Akron, and Kent Smith, of Euclid, would authorize the state auditor to go over JobsOhio's books and require the nonprofit to release more-detailed quarterly reports on job projects underwritten by grants and loans.

The replacement for the public Department of Development was exempted from public-records laws when it was created and Auditor Dave Yost, after auditing JobsOhio once, was barred by Republican lawmakers from examining its financials.

JobsOhio, which makes its cash from a long-term lease of the state's liquor-sales operation, should be open to public examination and oversight, the lawmakers said. "JobsOhio doesn't have to tell us anything. That's bad economic policy and it's just plain wrong," Smith said in a statement.

Ohio Supreme Court rules in Aultman medical records case

From The Beacon Journal

The Ohio Supreme Court has ruled that all documents Aultman Hospital generated in the care of a patient qualify as a medical record, a decision attorneys say will have statewide ramifications in the release of such information.

The state's high court issued the ruling (March 23) in a lawsuit filed by the daughter of a patient treated at the Canton hospital before he died. The case had been decided in Stark County Common Pleas Court before the 5th District Court of Appeals affirmed that ruling. In a 5-2 decision, the Ohio Supreme Court reversed the appeals decision that had limited the information to what was maintained by Aultman's medical records department.

A majority of the justices said the definition of a medical record is not limited to the information maintained by a hospital or other healthcare provider's medical records department. The ruling also said the physical location of where the data is stored does not determine if the information qualifies as a medical record.

The ruling and related state law pertains to medical records sought by a patient or his or her legal representative. The case is being sent back to the Stark County trial court.

"It has huge ramifications for patients' Right to Know throughout Ohio and prevents any hospital from concealing or artificially classifying medical records," said Lee Plakas of Canton, one of the attorneys representing the plaintiff in the lawsuit brought against Aultman in 2012 in an effort to force the hospital to produce the complete medical record.

Ohio Supreme Court shields data on homes of kids with lead poisoning

From The Columbus Dispatch

A law firm submitted too broad a records request when it asked for data on residences in the state's biggest county where children were found to have elevated levels of lead in their blood, the Ohio Supreme Court said (February 18) in rejecting the request.

By linking the demand to specific blood-lead levels, Lipson O'Shea Legal Group made it impossible for the Cuyahoga County Board of Health to comply without identifying specific individuals, the court ruled in a unanimous decision.

"It is undeniable that the address of a home where a child has an elevated blood lead level can be used to identify the afflicted child," wrote Justice Paul Pfeifer.

The high court sent the case back to a judge to see if any of the board's 5,000 pages of records could be released to the firm. Pfeifer also said the information might be available if a different set of documents was requested.

At issue was Lipson O'Shea's 2012 public records filing for documentation of all homes in Cuyahoga County "where a minor child was found to have elevated blood lead levels," according to the court ruling. The request included a specific blood-lead level amount.

Both a judge and an appeals court said state law prohibits releasing such records if the information could be used to reveal an individual's identity.

Enquirer sues fire marshal over fatal fire

From The Cincinnati Enquirer

The Enquirer on (February 4) sued the State Fire Marshal for withholding records in its investigation into the death of a Hamilton firefighter.

In refusing to release the fire marshal's initial report, Assistant Ohio Attorney General Hilary Damaser said in an email investigators considered the fire a non-routine criminal matter "from their very first approach."

The Enquirer, in its lawsuit, called this revelation concerning. The fire has since been ruled arson.

"An investigator who commences the investigation with his mind already made up is derelict in his duty," The Enquirer wrote. "The investigators' apparent prejudices make the need for public access to the SFM Report, and resulting scrutiny, all the more pressing."

Firefighter Patrick Wolterman died Dec. 28 rushing into a home he believed might have been occupied.

Ohio turns to security expert to shield lethal drug info

From The Associated Press

As Ohio sought to justify its reasoning for shielding the names of people or companies providing lethal drugs to the prison system, it paid a security consultant who determined that identifying the suppliers would put them at risk of "harm, violence or unlawful acts of intimidation," according to newly released documents.

But a pair of attorneys representing a condemned killer says the consultant simply repackaged a similar threat assessment he did for Texas. The security consultant, Lawrence Cunningham, said he couldn't immediately identify specific threats against anyone in Ohio. But he said threats in other states have come from inmates and their families.

Anti-death penalty advocates have accused Texas and other states of hyping threats to avoid disclosing pharmacies providing lethal drugs.

Ohio has repeatedly delayed executions because it can't obtain lethal objection drugs. Twenty-five inmates are scheduled to die beginning early next year, but the prison system still doesn't have the necessary drugs.

OHIO ROUNDUP

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DeWine: Fetal tissue probe records not public

From The Telegraph-Forum

Ohio Attorney General Mike DeWine's investigators compiled more than 66,000 pages of records on how Planned Parenthood disposed of aborted fetuses in a landfill.

But you can't look at any of them, thanks to a 1953 law that keeps investigations into nonprofit agencies private.

DeWine recently announced that Planned Parenthood's abortion clinics in Mount Auburn and Columbus used a third-party business, Accu Medical Waste Services, to dispose of fetal tissue by heating it in an autoclave to kill bacteria, then disposing of the remains in a Kentucky landfill. It was less clear how the third Planned Parenthood abortion clinic near Cleveland disposes of aborted fetuses.

The details were part of a several-month investigation into whether Planned Parenthood sold fetal tissue in Ohio. The probe was prompted by videos, which Planned Parenthood officials say were heavily edited, that purport to show abortion providers selling fetal tissue. DeWine's investigation found no proof that tissue was sold in Ohio.

(In December) Gannett Ohio and The Enquirer asked for copies of that 66,000-plus page investigation, which includes financial records and interviews with Planned Parenthood officials. Outraged lawmakers are using the findings as one basis for new legislation to require that fetal remains be buried or cremated.

But the records aren't public because of a little-used law from 1953 that prohibits DeWine from releasing any investigation compiled by his charitable law section, which looks into nonprofit organizations like Planned Parenthood.

Springfield Schools must release student data as public records

From Ohio Court News

Springfield City Schools must release student contact information requested by School Choice, a private non-profit organization whose mission is to inform students and parents about educational options, as long as parents have consented to making the information available, the Ohio Supreme Court ruled (July 21).

Neither federal nor state law restricts release of Springfield student "directory information" for the 2013-2014 school year, the Court ruled.

Writing for the Court majority, Justice Judith Ann Lanzinger ruled that Springfield must provide School Choice the records that fall within any of the nine categories of student information listed in the school district's consent form for those students whose parents had signed the form.

Auditor decides not to investigate Huber Heights records complaint

From The Dayton Daily News

Ohio Auditor Dave Yost's office will not investigate a public records dispute within Huber Heights city government.

A letter from the auditor's office to Huber Heights Law Director Alan Schaeffer notes the agency believes the issues are "resolved at this time" and considers "the matter closed."

Councilmen Richard Shaw and Glenn Otto were accused (in June) by Councilman Ed Lyons of improperly removing public records from city facilities. Lyons shepherded through council a motion to ask Yost to investigate the incident.

Shaw and Otto have long said the documents they removed – including four boxes worth – were copies and that no laws were broken. Nor, they said, were they involved in one page of minutes from a 2008 meeting disappearing.

Consumers' Counsel request for records denied

From The Columbus Dispatch

American Electric Power may have double-charged Ohio consumers for more than $120 million related to certain fuel costs, but most details are being kept under wraps while regulators investigate, with no timetable for resolution.

The Office of the Ohio Consumers' Counsel has asked for greater disclosure of records in the case, only to be denied this month by an administrative law judge.

"AEP's request for secrecy is a bad idea for this public process examining more than a hundred million dollars of charges to consumers," said Dan Doron, a spokesman for the consumer advocate's office.

In comments made (Janurary 22), AEP says there were no double-charges. The company disagrees with an auditor and the consumer advocate about how to interpret the rules for the charges in question.

"It's important that our customers understand that our billing and our cost definitions are based on the actual costs of running and operating the system, and we are very careful that those costs are only what we incur to serve those customers," said Pablo Vegas, president and chief operating officer of AEP Ohio.

The Public Utilities Commission of Ohio ordered an audit in 2014 to make sure AEP was correctly accounting for several charges that get passed to consumers. Such an audit is routine, but this one is notable because several outside groups had raised concerns that AEP got reimbursed for the same expenses twice in a period that runs from 2013 to 2015.

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Media coalition celebrates President Obama signing of FOIA reforms into law as FOIA turns 50 on July 4

From the NAA

President Barack Obama's signature on the FOIA Improvement Act of 2016 marks a high point in the half century history of the federal Freedom of Information Act.

"We are pleased to mark the 50th anniversary of the signing of the original Freedom of Information Act with a stronger FOIA," said Rick Blum, director of the Sunshine in Government Initiative, a coalition of media associations that has strongly supported efforts by Congress to make federal agencies implement FOIA as Congress intended a half century ago. "We thank President Obama for signing the legislation into law."

"FOIA is the most effective oversight tool available to the public, including journalists. Over the last 50 years, FOIA has helped improve public safety, save taxpayer dollars, and expose malfeasance or just plain bad decisions. Strengthening FOIA and limiting the government's ability to abuse or plain ignore it is a fitting birthday present to the American people as we celebrate the Fourth of July and FOIA's 50th birthday."

The new law ends the ability of agencies to withhold deliberations otherwise not protected under FOIA after 25 years, writes clearly into law the presumption of disclosure, strengthens the FOIA Ombudsman so the office can assert itself with the independence that Congress intended, makes FOIA more public-friendly by creating a single FOIA portal for agencies to receive requests and build additional public-friendly tools, and requires agencies to report on their FOIA track record each year in time for Sunshine Week.

Knight, Columbia commit $60 million to launch digital-era First Amendment center

From The Columbia Journalism Review

The Knight Foundation and Columbia University (on May 17) announced the creation of a new center that will use research, education, and litigation to advance First Amendment rights in the digital age. An independent 501(c)(3) nonprofit organization, the Knight First Amendment Institute at Columbia University is backed by $60 million in funding—and it is launching at a time of growing concern about the First Amendment's application to new technologies.

Knight and Columbia will contribute $5 million each in operating funds and $25 million each in endowment funds, according to a press release announcing the effort. The institute will use the funds to work on court cases that present opportunities to define—or redefine—free-expression principles, with an emphasis on digitally oriented cases. The plan also calls for research, publications, and events to educate the legal community on emerging First Amendment issues.

There's no hard timeline for the institute's opening, but a search is ongoing for a director, said Lee C. Bollinger, president of Columbia University. The institute is expected to take shape in the coming year, with a board that will include faculty from Columbia's law and journalism schools and people from outside the university.

Federal appeals court in Ohio says plea agreements should be open

From The Akron Beacon Journal

A Cincinnati-based federal appeals court says plea agreements should be open records under the First Amendment unless there is some overriding interest in closing them.

A three-judge panel from the 6th U.S. Circuit Court of Appeals makes that statement in a ruling affirming a man's 2014 sentencing on cocaine distribution-related charges.

While upholding the sentences, the judges sent the case back to U.S. district court in Akron to address its order on allowing public access to the defendant's plea agreement.

The opinion written by Judge Richard Allen Griffin stated that the public has a constitutional right to access plea agreements, and that they "play a central role in our criminal justice system." He wrote that courts need to show that closure is essential for higher values and is narrowly tailored.

In the battle over public notices, Hispanics, minorities stand to lose most

From The National Association of Hispanic Publications

Legal and public notices placed by government agencies have served as income generators since the advent of newspapers, but large federal entities like the Department of Environmental Protection Agency and state and local governments in places like Illinois, Arizona and small Maryland counties want to stop putting the notices in newspapers, instead places them on agency-controlled web pages.

While newspapers who carry a household name like the Los Angeles Times or Washington Post might be losing circulation and government agencies may argue they are losing their reach, the biggest losers in the battle to keep public notices could be newspapers whose circulations are actually growing and whose influence is greatest of all.

"We've come to expect big declines every time circulation numbers for newspapers are released. So, it's a shock to see one area where they are growing: Hispanic weekly newspapers," authors of a recent Pew Research Center study said.

It is these newspapers, in general, who have been able to reach countless Hispanic residents with legal and public notices even as many municipalities overlook minority-owned publications when placing notices, Media Life noted.

Ohio Coalition for Open Government

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The Ohio Coalition for Open Government (OCOG) is a tax-exempt 501 (c)(3) corporation established by the Ohio Newspapers Foundation in June 1992. The Coalition is operated for charitable and educational purposes by conducting and supporting activities to benefit those who seek compliance with public access laws. It is also affiliated with a national network of similar state coalitions.

The Coalition serves as a clearinghouse for media and citizen grievances that involve open meetings and open records, and offers guidance to reporters in local government situations. The activities of the Coalition include monitoring government officials for compliance, filing "amicus" briefs in lawsuits, litigation and public education.

The annual memberships to OCOG, as approved by the board, entitle a group or individual the use of the FOI telephone hotline, handled directly by attorneys at Baker & Hostetler in Cleveland, and subscription to the newsletter.

OCOG is funded by contributions from The Ohio Newspapers Foundation and other outside sources. Its seven-member board includes public trustees from organizations with an interest in freedom of information. For board members, please see the masthead on page 2.

Please consider a donation to OCOG

OCOG represents a broad coalition of not only media people but also everyday citizens who support the cause of open government in Ohio through various means, including regular newsletters. OCOG sometimes is asked to do more. In 2011, for example, OCOG underwrote a "friend-of-the-court brief" to support an appeal in an Ohio case in which a government office was charging thousands of dollars to provide a CD with public records. OCOG has also supported a number of other open government cases in the last two years.

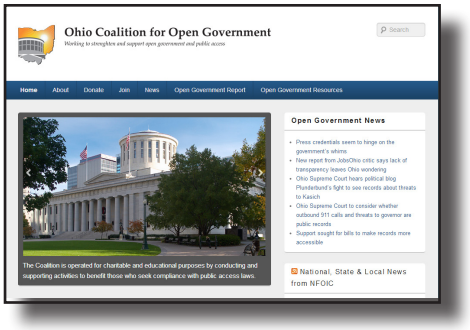
Donations to OCOG can be mailed to the address above. You can also submit donations online at www.ohioopengov.com.

Open Government Report and OCOG website

The OCOG Open Government Report newsletter is emailed twice yearly. To be placed on the distribution list, send your email address to Jason Sanford, Manager of Communications and Content at the Ohio Newspaper Association, at jsanford@ohionews.org.

You can also access continually updated OCOG information on the orgranization's website at **www.ohioopengov.com**.

If you have news or information relevant to OCOG, please email it to Jason Sanford at jsanford@ohionews.org.



Join OCOG

Any non-Ohio Newspapers Foundation member may submit an application for OCOG membership to the OCOG trustees for approval. Membership includes use of the OCOG hotline through the OCOG retainer to Baker & Hostetler and two issues of the OCOG newsletter. The cost of OCOG dues varies with the membership category the applicant falls under. The categories and dues prices are as follows:

Attorneys and Corporate Members	$70
Non-Profit Organizations	$50
Individual Membership	$35
College & University Students	$25
High School Students	$10

To download the OCOG application form, please go to www.ohioopengov.com.