Ohio Coalition for Open Government

OPEN GOVERNMENT REPORT

Winter 2015 • Published by The Ohio Newspapers Foundation

Problems outweighed need for speed on execution secrecy law

By Dennis Hetzel, OCOG President

For additional coverage on this issue, see "Government secrecy" op-ed on page 7

The State of Ohio botched its last execution. The convicted killer struggled for nearly 25 minutes before finally succumbing. Officials attributed it to the difficulty in obtaining the drug "cocktail" needed – drugs that few companies want to sell for executions in response to public pressure, their own beliefs or mandates from their governments overseas. Other states face similar problems and related lawsuits.

The answer to the problem, according to a new law recently signed by Gov. John Kasich, is more secrecy.

As originally introduced, House Bill 663 offered anonymity and immunity to all the key players. The names of drug suppliers were secret forever. Even the courts were blocked from obtaining information through subpoena or discovery. Businesses were restricted from the kinds of contracts they could sign with other businesses. The bill inserted government into the relationship between physicians and their professional organizations.

The final version of the bill, which was revised heavily in the Ohio Senate, was better, and we appreciate the bipartisan effort to improve it. Judges could see this information in some circumstances. Records would eventually become public – in 20 years. Lawmakers also narrowed broad language that invited the courts to find fresh restrictions on access to information. However, major issues remain.

The fundamental problem may be the lethal injection method itself. In essence, the state must coerce private-sector companies to do something they apparently don't want to do, or are saying they won't do unless they receive anonymity.

Companies say they face significant harassment and threats, but Ohio has

(see **EXECUTION LAW,** *page 3)*

OCOG joins in appeal of meetings case on secret email deliberations

By Dennis Hetzel, OCOG President

For additional coverage on this issue, see "Preserve transparency" editorial on page 9

How would you answer these questions?

1. Should a quorum of a public body in Ohio that is covered by the open meetings law be able to use e-mail for deliberations?
2. Is it OK if they don't include everyone on the board in those discussions before taking a final vote?
3. Should there be no obligation to provide notice to the public or allow the public to witness or contribute to those deliberations?

Answering "yes" to those three questions sounds like awful public policy – at least to us, and I hope to you. Unfortunately, that could be the message elected officials receive statewide if the Ohio Supreme Court rules in favor of the Olentangy School District Board of Education just north of Columbus.

And that is why the board of the Ohio Coalition for Open Government has voted to fund an amicus, "friend-of-the-court" brief in support of Adam White, the school board member who was excluded from e-mail deliberations and has sued the district, claiming that the e-mail deliberations were illegal and violated the open meetings law.

OCOG general counsel Dave Marburger, perhaps the state's leading expert on open meetings and open records laws, led the amicus effort in support of White, who is appealing an adverse ruling from the Delaware County Court of Appeals. (Marburger did not participate in the OCOG board voting.)

(see **OCOG APPEAL** *page 3)*

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Inside This Issue

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This newsletter is published twice yearly for the Ohio Coalition for Open Government. OCOG is a 501(c)3 non-profit organization affiliated with the Ohio Newspapers Foundation.

Mixed grades and 'incompletes' for the 130th General Assembly

Public notice bill a highlight, but new exemptions nibble away at sunshine laws

By Dennis Hetzel, OCOG President

Hetzel

Now that the 130th Ohio General Assembly has ended its two-year term, it's a good time to offer some grades to Gov. John Kasich and the General Assembly on the issues we follow.

On the plus side, a bill on public notices and newspaper websites became law and some other excellent bills passed. Some bills we liked and several we intensely disliked died. Some bad stuff got through, too, and it's hard to escape the notion that the stirring language on transparency that forms the basis of Ohio's open meetings and open records laws is being subjected to death by a thousand cuts.

For example, the "death penalty secrecy bill" (House Bill 663) – the subject of a separate article in this newsletter – adds exemption "cc" to the ever-growing list of open records exceptions in Ohio law. The designation "cc" means that we will have an eye-popping 29 exceptions in the statute, some of them quite sweeping, in addition to other exemptions that pepper other parts of the Ohio Revised Code.

Regarding that bill, we must give credit to legislators for working hard with the Ohio Newspaper Association (ONA) and other groups to improve a bill that was about as bad as a bill can get as introduced. However, we still see no real justification beyond anecdotal concerns for expanding the secrecy around Ohio's execution procedures.

Here is a sampling of some of the highlights and lowlights of the past two years. My somewhat arbitrary grades are based on the status at the end of 2014:

Bills to improve transparency

Teleconference meetings: Several bills (HB 485, SB 155 and HB 179) established strong procedures for officials to "attend" public meetings by teleconferencing. These rules ensure the public will have access to the meetings as well as information about who was not present. ONA considers such proposals case-by-case. For example, ONA does not support remote attendance for most school board, county commissioner or city council meetings. These bills, however, provide good templates for times when it makes sense. Grade: A.

Digital public notices: HB 483 ensured that the digital version of legal notices published in Ohio's newspapers will remain in the private sector in places where the public can find them and read them instead of on rarely visited and scattered government websites. In March, all newspaper notices will be posted at PublicNoticesOhio.com, operated by the Ohio Newspaper Association, at no additional charge to taxpayers or the public. Grade: A.

OhioCheckbook.com: Kudos to State Treasurer Josh Mandel for unveiling the best website I've seen to easily slice-and-dice how government spends money. (It's so good that I worry that some officials will try to limit what is released.) Unfortunately, HB 175 didn't become law, and it would have required this by statute for future treasurers. The ONA will support the concept going forward. Grade: Incomplete.

Open meetings definition: We really liked SB 93, a bill to improve the definition of a public meeting in Ohio to include "information and fact-finding" sessions that already are open in many other states. Local governments remain opposed, but the sponsor, Sen. Shannon Jones, hopes to bring it back next year. Grade: Incomplete.

Private police records: HB 411 and HB 429 address the ridiculous situation in Ohio in which sworn police officers who work for private entities such as private colleges can detain and arrest people in secret with no public records obligations. Attorney General Mike DeWine is on our side. Unfortunately, neither bill moved, but the ONA will try again in 2015. The Ohio Supreme Court also will be ruling on a case out of Otterbein University in Columbus. With any luck, the court will make the need for a statutory fix moot. Grade: Incomplete.

Removal of local officials: HB 10 as introduced raised concerns involving too much secrecy surrounding complaints of malfeasance in office that could lead to removal from office of local elected officials. Those were resolved, and all records become open at some point. Grade: B+.

Bills to reduce transparency

New open meetings exemption: A new exemption to the open-meetings law was inserted late in the process of HB 59 becoming law. It gives governmental bodies' new latitude to meet secretly to discuss economic development matters. ONA was successful in narrowing the exemption and, for the first time, a unanimous vote by a public body is required to go into executive session. Grade: D.

JobsOhio oversight: A last-minute amendment to SB 67 added new restrictions on transparency of JobsOhio, sharply limiting the ability of the state auditor to get information and perform thorough audits. Transparency regarding JobsOhio's status as a private agency receiving millions of taxpayer dollars remains an issue. Grade: F.

Concealed carry permits: We were concerned about a bill that would have removed the already severe limitation on journalist access to these permits. SB 60 never gained traction over the two-year session, but it probably will return in 2015. Grade: Incomplete.

In the next issue we'll report on 2015 legislation. There is much to address, particularly some bad Ohio Supreme Court decisions that are affecting journalists and citizens throughout Ohio.

As always, we welcome your suggestions and comments on the legislative process.

__Dennis Hetzel__ is executive director of the Ohio Newspaper Association and president of OCOG. Send email to dhetzel@ohionews.org.

Problems outweighed need for speed on execution secrecy law

Continued from page 1

laws to prosecute legitimate threats and harassment. We haven't seen evidence of this need for special protection. Only extreme circumstances should restrict your right to protest or limit your access to basic information about businesses that do controversial things with taxpayer dollars.

Testimony in the House made it clear that this bill will spawn new, expensive litigation, and witnesses demonstrated that there is no way for the state to guarantee total anonymity to a drug company or pharmacy. For one thing, many claims will occur at the federal level. Constitutional challenges remain. Interference by the Legislature with court procedures, the medical profession and private sector contracts isn't resolved.

Given these issues, it's reasonable to ask whether this bill is appropriate for the fast track in the closing weeks of a two-year legislative session.

Meanwhile, the Senate also adopted some less-controversial provisions of the Ohio Supreme Court Death Penalty Task Force.

Supporters say the matter is urgent, because executions can't occur in Ohio until this gets resolved. The argument that the victims of these awful crimes deserve swifter closure is an important one but not a compelling reason to pass a problematic bill. Perhaps legislators could have waited a little longer to make sure they crafted a good law.

Ohio has an important tradition of an execution process that is quite transparent. This is consistent with our public records law and supported by numerous court decisions that say records must be open with rare exceptions drawn as narrowly as possible.

Everyone should embrace that notion, particularly when the "problem" to resolve is the best process for the state to end human lives. House Bill 663 is highly unlikely to make the execution process faster and more humane, but it unquestionably will make it harder for citizens to hold government accountable for its actions.

OCOG joins in appeal of meetings case on secret email deliberations

Continued from page 1

The basic facts of the case, as reported by The Columbus Dispatch and This Week newspapers are these:

White sued in April, 2013, claiming that four other board members deliberated via e-mail regarding a response to an editorial in The Dispatch. The e-mail string reportedly sprung from White's investigation into allegations of improper spending by two district athletic directors. One director later resigned and both reimbursed the district, This Week reported.

The Dispatch's critical editorial was prompted by a board vote in September, 2012, to require communications between board members and district employees to pass through the district's administration. White voted against the measure. The e-mail discussion that excluded White focused on how the district should respond to The Dispatch. The board voted to ratify the letter they sent to the Dispatch on the same day White filed suit.

In September the Fifth District Court of Appeals affirmed a local court ruling that unsolicited e-mails did not constitute a "prearranged meeting," which is one of the requirements of the open meetings law.

Officials have to have some latitude to share ideas, and few would complain about a quick email exchange between two public officials. However, we think this case crossed the line. A quorum of an elected body was dealing with a matter of public interest and importance. Ohio law says the only way an elected board can make a decision, with only rare exceptions, is by meeting in person following adequate public notice.

As we are seeing all too often these days, the courts seem inclined to view the open government laws as very narrow despite their expansive – and stated – purpose. For example, the appeals court ruled that a letter to the editor from a board of education was not "official business" even though the board itself voted to officially ratify the letter at a board meeting.

And consider this statement in Judge John Wise's written opinion: "The mere discussion of an issue of public concern does not mean there were deliberations under the statute," Wise wrote. The fine distinction between "discussion" and "deliberation" seems tortured, at least to me as a non-lawyer.

Now this case is at the Ohio Supreme Court, where a ruling will set a statewide precedent.

Common Cause, the League of Women Voters of Ohio and the Ohio Association of Broadcasters supported White's appeal.

"Unless the judgment entry is reversed, all public bodies throughout the state of Ohio will be allowed to conduct all public business in private, provided they later ratify such private deliberations at a public meeting," Common Cause and the League wrote in their brief, filed in April. "That outcome would eviscerate the clear language and legislative intent of the statute."

Open Government Commentary

Ohio Supreme Court conjures up fears of marauding hordes of lawyers as reason to ignore public records law

By John C. Greiner

Has anyone noticed any marauding bands of lawyers who seek to "ensure a livelihood" by "scour[ing] the state hoping for a [public body's] failure to respond" to a public records request? I haven't either. But apparently the Ohio Supreme Court thinks that is the case. I'm not kidding. The quoted lines above come from the Supreme Court's per curiam decision in State ex rel. DiFranco v. The City of South Euclid.

In that case, the court ruled that a public body that ignored a public records request for six months and turned the records over only after the relator filed a mandamus action was not liable for attorney fees because the requesting party never recovered a judgment compelling the city to turn the records over. One reason the court applied this hair splitting reading of the Public Records Act was to spare public bodies from the aforementioned marauding hordes. Never mind of course the admonition from previous Supreme Court cases to apply a liberal construction to the Public Records Act to maximize transparency and never mind the lack of any evidence in the DiFranco record of this epidemic of greedy lawyers. The Court has spoken.

And, unfortunately, the intermediate appellate courts may be piling on. In State ex rel. Verhovec v. Village of Dennison, The Fifth Appellate District recently held that a requestor was not "aggrieved" by Dennison's improper destruction of public records. Apparently, the requestor, who was acting on his uncle's behalf couldn't provide satisfactory answers about why he wanted the records. For this reason, the court applied what can only be described as a "no harm no foul" analysis and denied his request for a forfeiture.

The Verhovec court relied on the Rhodes v. New Philadelphia case to support its decision. In the Rhodes case, the Ohio Supreme Court ruled that Rhodes, the requesting party, was not aggrieved by New Philadelphia's destruction of records because New Philadelphia established by "competent credible evidence" that "Rhodes's objective was not to obtain the records he requested but to receive notice that the records had been destroyed." But the Rhodes court also noted that the presumption is that a "a request for public records is made in order to access the records."

The Rhodes holding is fair as far as it goes. According to the decision, the burden is on the public body to establish the requestor has an ulterior motive. But the requestor gets the presumption that the request is legitimate.

The Verhovec court, however, placed the burden on the requesting party to give an explanation for why the records were requested in the first place. Verhovec made the request at the his uncle's behest. And, apparently, in his deposition, he was unable to answer why his uncle wanted the records. In reading the opinion, that fact seems to the smoking gun. But given the Supreme Court's ruling in Rhodes, that seems like a paper-thin basis for denying the forfeiture.

First, Verhovec's inability to articulate why someone else wanted the records hardly establishes in a competent and credible way that the real reason for the request was to get the forfeiture. What it establishes is simply that Verhovec was unsure why his uncle made the request. That does not lead immediately to the conclusion drawn by the court.

But second, and maybe more importantly, by forcing the requesting party to explain why he requested the records, and then denying the forfeiture if the explanation is insufficient, the court is putting the burden on the requesting party. That flies directly in the face of the presumption that the request is legitimate.

Third, making the requesting party explain the reason for the request is contrary to the Public Records Act itself. R.C. 149(B)(4) says a public office can't condition its production of the records on the requesting party disclosing its intended use of the records. R.C. 149.43(B)(5) says the public body can't even ask for this information unless the information would somehow assist the public office to locate the records. And even then, the public body has to let the requesting party know it can decline to provide the information.

So in the face of a clear statutory mandate to discourage any requirement that the requesting party explain itself, the Fifth Appellate District apparently has decided not only to require that very thing, but in addition, it will deny the party's statutory right to a forfeiture if the explanation isn't satisfactory.

It's bad enough that Ohio courts have invented a boogeyman. It's worse when they ignore the law to defeat him.

John C. Greiner *is a partner with Graydon Head in Cincinnati. He practices in the areas of First Amendment law and commercial litigation.*

Greiner

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

Ohio Supreme Court delivers troubling open records decision in security records case

By Dennis Hetzel, OCOG President

Everyone should agree that the governor of Ohio needs excellent security, and that the government has a responsibility to keep him and his family safe. I doubt that anyone would argue that all details and reports about such security procedures or threats received should be public records.

That doesn't mean the executive branch should have a free pass to keep anything regarding the governor's security secret. However, the Ohio Supreme Court has issued yet another sunshine-law decision that could open new exceptions to our open records laws.

In this latest case, the Court rejected efforts by the liberal blog Plunderbund to get records documenting threats against Gov. John Kasich. In a unanimous finding, the court said in essence that records related to any threats made against the governor are closed under the "security record" exemption in the law.

What troubled us most about this decision was the court's willingness to accept unsupported arguments contained in affidavits making claims such as each-and-every threat has the potential to reveal security and safety vulnerabilities. Another argument administration officials and the State Highway Patrol made was that public disclosure of the number of threats also would expose security limitations.

These expansive claims simply cannot be true unless you throw common sense out the window. Is it really true that all threats expose issues with security? Everyone who has ever dealt with law enforcement officials in records fights recognizes that police agencies are the masters of "sky is falling" arguments, knowing how hard it is for anyone to disagree with them without running the risk of a backlash. This is particularly so, and even understandably so, when security issues and even terrorism might be involved.

Still, if terrorists have an interest in Gov. Kasich, that's news. Not only did the justices give skepticism a day off by accepting these blanket claims, they also refused to privately review the records in question.

Reviewing the records would have opened the possibility of an obvious solution. It is called redaction – the act of "blacking out" information that should appropriately be closed. Instead, the court ratified a blanket exemption. It is supposedly settled law and explicit that redaction is the option government must follow if redacting information from a public record would make it an open record.

Perhaps if the Court had conducted a systematic review, even of a sampling of reports, most or even all of the requested records still would have remained appropriately closed.

I am not here to support Plunderbund; the case has flaws and seems like an overreach in terms of what they were requesting. However, the public has a right to know, at least in general terms, about what types of threats our elected officials are facing and, at least in general terms, what the taxpayer-funded police agencies are doing. That is going to be even harder to determine now.

Taxpayers apparently should just keep sending money and assume that the police agencies do not require scrutiny. If the governor or other officials make claims that threats are landing practically every day, shouldn't there be some way to verify if this is true?

There is another dynamic here as well. Both political parties complain about the other side "abusing" the open records laws in order to harass the opposition. I don't think I'm exaggerating to say that Republicans detest Plunderbund. However, the source of a records request never should be a consideration.

Note, too, that the Republicans exposed Ed FitzGerald's late-night drive home with a female member of an Irish delegation in Cleveland by making records requests to a suburban police department. That turned into another big problem among many that helped doom FitzGerald's gubernatorial campaign.

It goes around and comes around in politics.

Thanks go to attorney Jack Greiner for his observations to assist in this column.

Want governor's correspondence? Make sure you're very specific

By Randy Ludlow
The Columbus Dispatch

The office of Republican Gov. John Kasich is advising Ohioans who want copies of communications and emails to specify a subject or topic or their request for public records is doomed to rejection as overly broad.

Lawyers for Attorney General Mike DeWine, who are defending Kasich and Lt. Gov. Mary Taylor in a public records suit filed by the Ohio Democratic Party, provided the advice (on Sept. 8) in an Ohio Supreme Court filing.

Their motion asked the justices to dismiss the Democrats' suit, arguing it cannot succeed because the party failed to file a proper public records request and rejected the governor's office invitations to specify exactly what it is looking for.

Citing prior Supreme Court rulings regarding overly broad requests, the motion says government has no responsibility to turn over all communications between office employees over the space of a year.

Governor's office "correspondence records may be retrieved by subject matter or topic identified in the public records request," the motion states.

Of course, it can be argued that being required to specify a topic to obtain correspondence hands a government office sweeping discretion to determine whether a particular record pertains to the subject specified by the requestor.

Further, the governor's office essentially states that no fishing expeditions are allowed. Can all emails between two parties over the space of a year be retrieved? Yes, in all likelihood. But, that does not mean you are entitled to them, the governor's lawyers argue.

Time was, Ohio's public records law was to be liberally construed in favor of disclosure. Now, even if government can find and potentially produce everything you seek, you're not entitled to it.

***Randy Ludlow** is a senior reporter for The Columbus Dispatch, where he writes on public records, open meetings and free-speech issues. He is also on the board of trustees for the Ohio Coalition for Open Government.*

Open Government Commentary

The public's right to know

By Laura Arenschield,
The Columbus Dispatch

When I first took this job, environmental activists and other reporters warned me that Ohio's state agencies could be tough to deal with, that they sometimes act as though they would rather protect oil and gas companies than the people of Ohio.

I don't know whether that's actually the intention of the Ohio Department of Natural Resources, which is the agency that oversees fracking and drilling and all its related activities here. But I get the frustration.

In June, I asked for a stack of public records related to fracking from ODNR. These are important records, we think here at the newspaper, because they have a lot to do with Ohioans' health and safety. For the last three months, the agency's public information officers – the people who are supposed to be helping us all have access to information about ODNR's activities — have told me that they were working on the request, or that the request was with their legal team for review.

Three months seemed like a long time to us here, so this morning, I, another reporter, and my editor had a conference call with ODNR's chief lawyer to see what the holdup might be.

He told us he just found out about our request late last week, which would mean that for the last three months, ODNR's public information folks have been doing basically nothing to facilitate access to information for the public.

Then he told us it would take up to seven months for ODNR's lawyers to review the files. Seven months, when we made this request three months ago.

We're obviously frustrated here at the Dispatch. And maybe you don't care that a newspaper is frustrated. Journalists aren't exactly popular people these days.

But even if you don't care about the newspaper, I think you should care that the state agency tasked with regulating the oil and gas industry is, in effect, blocking access to records about that industry.

Here's why: Public records are one of the ways you, the public, get to keep an eye on what your government is doing. That's an important thing for almost every aspect of government, but it's especially important when the industry in question is dealing with toxic chemicals and radioactive soil, is using millions of gallons of Ohio's clean water, and is drilling into our state's ground. The industry has created jobs, which is a good thing. But it's also caused fires (and problems for firefighters), may have caused earthquakes, and has contaminated our water and land time and time again.

And it's especially important when the industry in question donates millions of dollars to political candidates here.

ODNR's chief lawyer told me that he'd jump on this request, and I certainly appreciate his help now. But I'm struggling to see how holding a public records request for months without acting on it helps the people of Ohio in any way.

This information belongs to us, the citizens. I hope our government starts acting like it.

Laura Arenschield *is an environment and science reporter for The Columbus Dispatch.*

Ohiocheckbook.com is a great tool for journalists and anyone who supports open government in Ohio

By Dennis Hetzel, OCOG President

In early December State Treasurer Josh Mandel launched his OhioCheckbook.com website. Shortly before the launch I was given a test drive of the site and found it to be an impressive tool that could generate interesting stories and save time for any reporter writing about state spending. The website will also be useful for any Ohio citizen who wants to keep track of what their state government is doing.

With the site you can quickly drill into a lot of details surrounding state government expenditures, including payments to individual vendors and contact information for the departmental official responsible for the expenditure. You also can export data directly into Excel, so you aren't limited to PDF formats. (For example, in about two minutes, I found out the state of Ohio has spent about $242,000 so far in 2014 at Hilton hotels, and I exported detail of every expenditure.)

The database does not include local government spending, which would be quite an undertaking to add. Mandel's website continues to offer a searchable database of state employee and public school district salaries. Salaries paid by charter schools aren't available either. We'd obviously like to see those items added in the future. Still, this probably places Ohio in the forefront of ready access to spending information.

I should add that the Ohio Newspaper Association supported House Bill 175, which would mandate by statute that the state treasurer offer such a database. If it becomes law, this means future treasurers couldn't discontinue doing this without a statutory change.

Unfortunately, the bill wasn't passed in the last session of the General Assembly (possibly because of a dispute over what state agency or office is the best place to house this database).

I hope the bill will be revised and voted on in the new 131st General Assembly. State Treasurer Mandel has done a service to all of Ohio with this website, and it would be a shame if a future treasurer was able to undo his achievement.

Government secrecy keeps public in the dark

By Benjamin J. Marrison
The Columbus Dispatch

Are you a fan of government secrecy? What if the secrecy involves the taking of a life? What about someone threatening to explode a bomb at your local high school?

These issues are bubbling in central Ohio.

After the state botched its last execution, lawmakers are rushing to pass legislation that would limit information available to the public about executions. If you recall, convicted killer Dennis McGuire gasped and choked for about 20 minutes before succumbing during his Jan. 17 execution.

I've heard from folks who have no sympathy for McGuire because he showed none for his victim, a pregnant woman he raped and murdered in 1989.

State officials have said the problems with McGuire's execution stem from difficulties obtaining the necessary drugs. Some companies that don't want to be associated with executions have refused to make their drugs available for that purpose. They don't want to be harassed by protesters.

To resolve this problem, Dispatch Reporter Alan Johnson reports, Ohio lawmakers are proposing to shield the identity of individuals and entities that manufacture, compound or supply drugs used for lethal injections. They also want to provide anonymity for any physician who participates in the process, as well as members of the prison execution team. This information would be so secret that it would be inaccessible even with a court subpoena.

Rep. Mike Curtin, D-Marble Cliff, a member of the committee reviewing the proposal, questioned the consequences of making secret the state's power of "life and death," a process that has been public since Ohio conducted executions by hanging. He asked: "Why should we be rushing in lame-duck session to pull the shroud of secrecy over this issue?"

Are you OK with this type of secrecy?

Because executions are conducted in the name of all Ohioans, there are laws requiring information about them to be public, including a provision allowing witnesses to attend the executions. This allows the public to be aware of any problems (as was the case with the last execution).

The Ohio Newspaper Association is challenging the legislation.

"Under the current language, it will be impossible for journalists, citizens, families and anyone else outside a handful of government officials and bureaucrats to scrutinize the process," said Dennis Hetzel, executive director of the newspaper group. He said the proposed, open-ended exception will invite the courts to block access to more and more information.

"We have an open-records law that supposedly contains a strong presumption that records are open with rare exceptions drawn as narrowly as possible. The most fundamental right of all is the right to life. There must be reasonable outside scrutiny and accountability when the government itself is putting people to death," Hetzel said.

Transparency is a good thing. Right?

Answer this question: If a bomb threat cancels school in your community and a suspect is arrested, would you want to know who was charged with making the prank call that caused panic? Ohio law says you have a right to know.

It took a week, but officials in Fayette County finally provided the names of two teenagers who allegedly scared the bejeebers out of nearly everyone in Washington Court House by making a bomb threat. Authorities say the two posted the threat anonymously using a cellphone app, and that resulted in law-enforcement officers with bomb-sniffing dogs converging on the high school.

Fayette County officials said their policy is to not release information about juveniles.

We sometimes run into overprotective, law-ignoring prosecutors or judges who want to avoid further embarrassment for family members or to not compound the mistakes made by a teenager by seeing it in the newspaper or on television.

As a parent, I understand and appreciate the sentiment. But the public-records statute is a law, not an option.

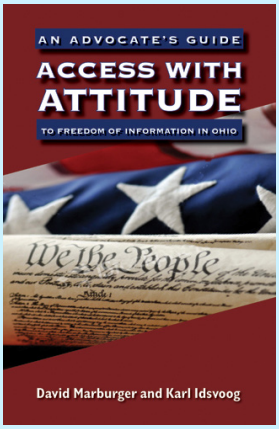
What if the teenager decided to get drunk and get behind the wheel of a car? Would the prosecutor — in the spirit of not compounding the individual's mistake — not enforce the drunken-driving law? I think we know the answer to that question. What would happen if you told the IRS that your policy is to not file income-tax returns? What if you told the police that your policy is to not stop at red lights?

The public has a right to know who was accused of the crime.

And knowing who did it helps the community also to know who didn't do it. By withholding the names, the community is left to speculate. And that's unfair to the other 14- and 16-year-olds of the Fayette County community.

***Benjamin J. Marrison** is editor of The Columbus Dispatch.*

Receive discount on open government reference book and support OCOG



David Marburger and Karl Idsvoog have written a book that should be in every Ohio newsroom. *Access with Attitude: An Advocate's Guide to Freedom of Information in Ohio* is an essential user's guide to navigating the complexities and occasional weirdness of Ohio's open records laws.

Now, Buckeye State journalists and open-record advocates have another reason to purchase this book: Marburger and Idsvoog are donating their proceeds from this book to the Ohio Coalition for Open Government.

Marburger, an attorney with Baker & Hostetler in Cleveland, is a member of the OCOG committee and has represented many Ohio Newspaper Association members in Sunshine Law cases. Idsvoog is a journalism professor at Kent State and an award-winning investigative reporter.

The retail price for the book is $29.95, but Ohio University Press is offering OCOG supporters a 30 percent discount on orders between one to four copies. To get the discount, use discount code M1121 when ordering on the Ohio University Press website, www.ohioswallow.com. For a 40 percent discount on orders of five or more books, contact Ohio University Press's business manager, Kristi Goldsberry, at (740) 593-1156 or goldsbek@ohio.edu.

Open Government Editorials from Ohio Newspapers

Clear need to know regarding oil and gas industry

Editorial from
The Akron Beacon Journal

Local governments in Ohio face an unnecessary struggle getting information they need to prepare effectively for accidents involving oil and gas wells and the shipment of crude oil on rail lines. Full and prompt disclosure is a must. It serves the objective of making sure public safety and the safety of first responders are leading regulatory priorities.

Several recent developments have underscored the need to re-establish a greater degree of local authority. The problem is that the legislature in 2004 placed exclusive control over oil and gas drilling with the state Department of Natural Resources. Shipments of oil by rail are largely regulated by the federal government.

(In July) the Ohio Environmental Council raised alarming questions about how the Department of Natural Resources responded to a fire at a drilling rig in Southeast Ohio. According to a report by the U.S. Environmental Protection Agency, the department was not actively involved until three days after the well pad caught fire. It took five days for Halliburton, the drilling company, to disclose a complete list of all chemicals used in the drilling process.

Local governments are fighting back, too, seeking to reinstate some authority over the rapidly expanding oil and gas industry. But they are meeting resistance from drillers. Of late, the industry sued Broadview Heights over a "bill of rights" the city adopted in 2012. The city attempted to ban hydraulic fracturing, despite the state law denying such actions.

In Hudson, fire officials and residents are concerned about shipments of volatile Bakken crude across the state. The federal government now requires notification, but not if shipments are below 1 million gallons.

Changes to state and federal regulations on what must be disclosed, when and to whom deserve high priority. The best strategy would be to require complete disclosure to local officials in advance, including, in the case of oil and gas well drillers, proprietary information about chemicals used in hydraulic fracturing.

Attorneys from the Ohio Environmental Council point to the promising route, one suggested by a 1986 lawsuit involving a city of Oregon ordinance targeting a hazardous waste dump. As with oil and gas wells, state law barred local zoning and permitting requirements. But an Ohio Supreme Court decision upheld the ordinance, which required the dump to provide detailed records and levied a fee to fund city oversight.

The city of Athens has acted in a similar fashion to deal with oil and gas wells and waste disposal, its oversight aimed at protecting public safety through monitoring, and at recovering costs imposed on the community. The sound point is, local communities are on the front lines when things go wrong, their safety personnel and citizens bearing the brunt. At the least, they deserve to know fully and promptly what harmful substances are within their borders.

Files should be open: Private police wield government powers and should be accountable

Editorial from
The Columbus Dispatch

Law-enforcement agencies wield great power and therefore must be accountable to the public for its use. This applies regardless of who is paying an officer's salary, especially when that employer is an institution such as a university.

Ohio Attorney General Mike DeWine is weighing in on a legal fight to establish that arrest records and incident reports of Otterbein University and other private universities and hospitals are public documents.

DeWine filed a friend-of-the-court brief with the Ohio Supreme Court in support of a suit filed by a former Otterbein student journalist Anna Schiffbauer. In it, he asserts that since these private police departments are a creation of state law – granting them governmental police powers, including the authority to arrest – they are public officers required to turn over records.

Westerville-based Otterbein denies that it is required to disclose records and has asked the court to dismiss the suit. Universities, though, should recognize that parents, students and the community have an important interest in police activities.

Across the state, several dozen hospitals and universities, employing more than 800 officers, could be affected by the court's ruling.

Heightened attention to public safety, especially to sexual-assault incidents on campus, argue in favor of transparency, as do recent controversies over the use of force by police around the country. Openness also is in line with the core values of an institution of higher learning. In fact, on its website, Otterbein lists transparency and accountability among seven "guiding principles" of the university.

Joining DeWine in the effort to establish private-police records as public records are the Society of Professional Journalists' Legal Defense Fund and the Ohio Coalition for Open Government. Those two groups have contributed $6,500 toward Schiffbauer's legal fees.

As the suit has progressed, a bipartisan group of state lawmakers also has been taking a parallel track to establish that private-police records are subject to Ohio's Open Records Act. House Bill 429 was introduced in February by Democrat Heather Bishoff of Blacklick and Michael Henne, R-Clayton, following DeWine's call for a legislative approach to the issue. The bill, which hasn't received a full vote yet in the House, could change course depending on the outcome of the lawsuit, but could provide a backstop if DeWine and other open-records advocates feel it is needed.

Regardless of how transparency is established, it is important that those who are armed and authorized to use force and make arrests are subject to public scrutiny.

In a free society, police work must be done in the open to guard against abuse – and against unfounded charges of abuse. Whether citizens are able to keep an eye on the actions of law enforcement shouldn't depend on who signs an officer's paycheck. Secrecy creates a system that is more susceptible to corruption and the violation of civil rights.

Preserve transparency: Ohio Supreme Court can ensure that government operates openly

Editorial from
The Columbus Dispatch

Open-meetings laws are effective only if they actually compel public entities to conduct public business in public. That clearly is the intent, and the Olentangy school board appears to have violated the intent of the law by discussing what should have been public matters through private emails.

The Ohio Supreme Court is being asked to take up an appeal of a case filed by an Olentangy school board member, Adam White, against other members who corresponded with each other via email before taking an official action. White filed suit last year in Delaware County Common Pleas Court, which ruled that four other school board members did not violate open-meetings laws in exchanging the emails.

The Dispatch would welcome the Supreme Court taking the case and affirming the need for boards to adhere to what often are referred to as "sunshine" laws. Other groups supporting White's appeal include the Ohio Coalition for Open Government, Common Cause Ohio and the League of Women Voters of Ohio, all which joined in a "friend of the court" brief backing White.

The suit came about after the board's four other members — Dave King, Julie Wagner Feasel, Kevin O'Brien and Stacy Dunbar — exchanged emails and calls that White says constituted an illegal, private meeting. Anyone in business today knows that many "meetings" as they were known a decade or two ago now have been replaced by this type of technology-enabled communication, so to argue that an email or phone call can't constitute a meeting is nonsense.

That argument also renders meaningless the laws that are supposed to ensure public oversight of government. If a board thinks there are no consequences for these type of secretive communications, they will become commonplace, especially where controversial topics are involved.

Clear direction from the Supreme Court also would be welcome to counter another lower-court ruling in a similar Ohio case several years ago.

In 2005, an Ohio judge ruled against a board member in the Northwest Local School District in Cincinnati who alleged his colleagues broke open-meetings laws via emails; the judge said the man failed to prove that such an email could be called a meeting.

White is seen by some in the school district as a gadfly. Since his election in 2011, he often has been at odds with his school board colleagues, and accused the schools superintendent of threatening him — something other board members deny.

But he was elected to serve the public, and on this score, White seems to be doing his job.

Some boards already have been shown to act as rubber stamps for the administrations they were supposed to be overseeing, as was the case with Columbus City Schools under former Superintendent Gene Harris. Some government boards are surprised or even hostile when members of the public appear at meetings. Many operate for years with nary a "no" vote or substantive debate in open meetings, a clear indication that discussions and decisions are being made out of sight of the public.

This isn't the way it's supposed to work; technology was supposed to enhance, not reduce, transparency and access to information for the public.

Ohio public records training now online

From The Marion Star

Can I get a copy of a crash report? When can my school board discuss business in secret? Those questions and others will be answered in three hours of public records training, which is now available online.

Ohio Attorney General Mike DeWine announced (December 15) that three hours of training on which records are open to the public is now available on his website, sunshinelaw.ohioattorneygeneral.gov. The training, which is required of elected officials or a representative from their staff, is divided into 13 video lessons.

The training was recorded from live sessions that occurred this year. Across Ohio, about 1,200 people attended these sessions in 2014. However, many others couldn't carve out the time.

"It can be difficult, at times, to make the training in person," Matthew DeTemple, executive director of the Ohio Township Association, said at a news conference.

DeTemple said trustees often work full-time jobs and might not be free to attend a session in Columbus. By putting the classes online, more township officials will be able to comply with their obligation to be trained in public records laws.

DeWine

The online lessons have quizzes. Those who finish all 13 lessons will receive a certificate of completion, DeWine said. Attorneys can use the online training for three hours of continuing legal education.

"Ohio sunshine laws allow citizens to be knowledgeable about how their government works, and they help keep all levels of government accountable," DeWine said at the news conference.

Many of the public records disputes sent to the attorney general's mediation program, which helps resolve record disputes with local government officials and residents, could have been resolved with a better understanding of the law, he added.

Dennis Hetzel, president of the Ohio Coalition for Open Government, said the online courses were a good supplement to the in-person training.

"This continues the efforts the attorney general's office has made to move the ball down the field a bit in terms of making this information accessible," Hetzel said.

To access the online training, go to https://sunshinelaw.ohioattorneygeneral.gov

OHIO ROUNDUP

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DeWine: Otterbein police records are public

From The Columbus Dispatch

Ohio Attorney General Mike DeWine wants to enter the legal fight over whether the arrest records and incident reports of private police forces are public records.

DeWine asked the Ohio Supreme Court on (Aug. 1) to accept his arguments supporting a lawsuit filed by a former Otterbein University student journalist seeking police records from the private Westerville school.

Since the Otterbein police department – and others at private universities and hospitals – is a creation of state law, they are public offices required to turn over records, DeWine's office wrote in a friend-of-the-court brief.

Anna Schiffbauer, then news editor of Otterbein360.com, a student-run news website, sued Otterbein earlier this year over its refusal to turn over records of arrests made by university police.

Otterbein responded in its court filings that its police records are not public because it is a private institution neither funded nor controlled by state government. The university has asked the justices to dismiss the lawsuit.

Since state law grants officers working for private employers police powers that include arrest authority, private police forces are subject to Ohio's public records law, DeWine's office wrote in its filing.

Abortion-rights group sues Ohio Department of Health over records

From The Columbus Dispatch

Fearing that Ohio Right to Life wields "improper" influence over the Ohio Department of Health, an abortion-rights group is suing the state for records of phone calls and emails exchanged with abortion opponents.

The Health Department refused to turn over records, saying that the request from NARAL Pro-Choice Ohio Foundation was "overly broad" and that the agency lacks the ability to search for specific emails and phone records.

NARAL has filed a lawsuit asking the Ohio Supreme Court to order the Health Department to turn over records it requested on Oct. 27. The justices referred the case to mediation (on Jan. 6), halting any additional filings.

The Health Department rejected the organization's request for records reflecting phone calls to two telephone numbers associated with Ohio Right to Life and emails exchanged with people whose email addresses end with "ohiolife.org."

Toledo Blade lawsuit over detention of journalists by military goes to mediation

From The Blade

A federal lawsuit filed by The Blade against a variety of government officials over the detention of two journalists by military security outside a Lima tank plant was referred (Sept. 29) for a mediation meeting.

Blade reporter Tyrel Linkhorn and photographer Jetta Fraser were detained outside the General Dynamics plant March 28 by military security personnel, who confiscated Ms. Fraser's cameras and deleted pictures. The lawsuit states that Ms. Fraser and Mr. Linkhorn were unlawfully detained, that Ms. Fraser was unlawfully restrained and received unlawful threats of bodily harm, that the cameras were unlawfully confiscated and pictures unlawfully destroyed, and that the pair's Constitutional rights were unlawfully prevented from being exercised.

The lawsuit in U.S. District Court claims Ms. Fraser and Mr. Linkhorn's First, Fourth, and Fifth Amendment rights were deprived, as were their rights under the First Amendment Privacy Protection Act.

Lawsuit challenges Ohio law shielding execution drug makers from being named

From The Blade

The governor's signature had just enough time to dry before a lawsuit was filed challenging a new law to shield the identity of the makers of Ohio's execution drugs and others involved in the process.

The federal suit was filed (on Dec. 23) by four death row inmates, including Grady L. Brinkley, who was convicted in the 2000 shooting of his 18-year-old Toledo girlfriend, Shantae Smith.

Other plaintiffs include Ronald Phillips, of Summit County, whose execution is set for Feb. 11; Raymond Tibbetts, of Hamilton County, set to die on March 12, and Robert Van Hook, also of Hamilton County, who has a Nov. 17 execution date. The Ohio Supreme Court has not set a date for Brinkley.

The suit argues that House Bill 663, signed by Gov. John Kasich on Friday, violates the First Amendment rights of the death row inmates by offering at least temporary anonymity to a compounding pharmacy that agrees to manufacture the state's preferred execution drug and permanent anonymity to most of the rest of the execution team.

Judges advocate for law to slap down nuisance lawsuits

From The Columbus Dispatch

It's unusual for a panel of judges to engage in outright advocacy in a ruling.

The Eighth District Ohio Court of Appeals crossed that line (in mid-December) in urging state lawmakers to pass a law to help preserve freedom of speech and the press in Ohio.

In a ruling against Ohio coal magnate Robert Murray in a defamation suit he filed against a weekly newspaper, the appellate judges upheld the trial court's grant of summary judgment in favor of the Chagrin Valley Times.

The often-combative Murray, the court agreed, is a public figure and was not

defamed by the newspaper's reporting, a column and an editorial cartoon.

But, the court's opinion didn't end there.

The judges suggested that Ohio needs a law that quickly slaps down nuisance lawsuits designed to discourage public or press comment on issues of public concern.

"Given Ohio's particularly strong desire to protect individual speech, as embodied in its Constitution, Ohio should adopt an anti-SLAPP statute to discourage punitive litigation designed to chill constitutionally protected speech," the court wrote.

Court: State has no jurisdiction over tweets

From The Cincinnati Enquirer

The Ohio Elections Commission can't crack down on Tweets — even if those 140-character messages include false political information, a Cincinnati federal judge ruled on (Oct. 27).

The decision by Judge Michael Barrett, who sits on the U.S. District Court for the Southern District of Ohio, bars the Ohio Elections Commission from enforcing the state's false claims statute. That law bans political lies in campaigns, and it's been the subject of multiple legal battles in recent years.

At the center of this fight: a series of 140-character messages posted on Twitter in 2011 by a Cincinnati anti-tax group, COAST, which urged support for a charter amendment that would have blocked the streetcar project. COAST said the streetcar was diverting money from the city's fire department, causing services to be reduced.

Group says Kasich evading records request

From The Columbus Dispatch

A group dedicated to shining "a light on the fossil fuel lobby's influence and propaganda" is warring with the administration of Ohio Gov. John Kasich over his office's response to its public records request.

In a blog post, the Checks and Balances Project accuses the administration of evading its request for records concerning Senate Bill 310, which weakened Ohio's renewable energy standards. The law was crafted by majority Republican lawmakers and signed by Kasich.

Simply put, the Kasich administration said in its response letter to the group, no records exist concerning the Check and Balance Project's areas of inquiry and it failed to sufficiently identify records it sought concerning meetings between the governor's staff and electrical (coal-burning) utility representatives.

Ohio Innocence Project sues Columbus police for murder case records

From The Columbus Dispatch

The Ohio Innocence Project contends it is illegal, and undermines accountability, for Columbus police to refuse to release records on closed murder cases until the killers die behind bars or are freed from prison.

An attorney with the group, based at the University of Cincinnati College Of Law, sued Police Chief Kim Jacobs in the Ohio Supreme Court on (Sept. 19) over her division's refusal to release investigative records in a murder case.

Columbus police have refused to release case files in murder cases since 2010, interpreting an appellate-court ruling as forbidding the release of records as long as defendants still have potential appeals.

Courtrooms secretly watched by prosecutor

From The Cincinnati Enquirer

A firestorm of criticism has erupted in Warren County after defense lawyers discovered that a live feed of their hearings and trials goes directly into Prosecutor David Fornshell's office across the hall.

The revelation came during a recent aggravated murder trial when a defense attorney complained that others were able to hear his confidential conversations with his client because they were being broadcast over a microphone in the courtroom.

The flap has defense attorneys asking judges to put an end to the practice, judges refusing, and the prosecutor saying he's tired of accusations that he did anything improper.

National civil liberties experts say they've never heard of anything like it and court officials in Butler, Clermont and Hamilton counties say it doesn't happen there either.

Court denies attempt to use public records law for financial benefit

From Ohio Court News

The Fifth District Court of Appeals has upheld a decision to deny a man trying to use the public records law for financial benefit. In a twist of fate, the court relied on a 2011 Supreme Court of Ohio decision overturning one of its own rulings in a similar case.

The Fifth District (in October) affirmed a ruling of the Tuscarawas Common Pleas Court granting summary judgment to the Village of Dennison, which claimed the motive for James Verhovec's public records request was to ultimately gain up to $10,000 in fines that could be imposed on the village.

In September 2010, James Vehovec filed a written public records request asking for 20 years of all council meeting minutes, handwritten draft minutes, and audio/video recordings of council proceedings dating back to January 1990. The village provided all typewritten minutes, the handwritten notes in existence, and indicated all audiovisual recordings were non-existent. Vehovec then filed suit seeking damages, court costs, and attorneys fees for failing to provide the old handwritten records.

Website compares Ohio charter schools, districts

From The Columbus Dispatch

Noting the current difficulty in finding information about charter schools and how they compare with traditional Ohio public schools, a progressive policy-research group and the state's largest teachers union teamed up to create a website that allows for quick comparisons.

But charter-school advocates quickly criticized the site as "really misleading."

Knowyourcharter.com allows people to search by traditional public-school district or charters to bring up a variety of academic performance, personnel and financial information. Calling up a public school district also brings up a list of all the charter schools that at least one student from that district attends.

Viewers can find out how the district's performance index grade compares with charters, how much state money from that district goes to charter schools, and a variety of other data.

OHIO ROUNDUP

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Court rules records of threats against Kasich are not public

From The Columbus Dispatch

Police records involving threats against Gov. John Kasich can remain secret because their release could compromise the governor's safety, the Ohio Supreme Court ruled (on Aug. 27).

State Highway Patrol records that the Department of Public Safety refused to turn over to the liberal-leaning blog Plunderbund are exempt from release as security records, the court ruled.

The justices' unanimous ruling could affect a case in which the Ohio Republican Party sued Democratic gubernatorial nominee Ed FitzGerald over his claiming the security exemption to withhold records.

"The records at issue involve direct threats against the highest official in the executive branch of Ohio government," the court wrote in its unsigned opinion.

"Information included in these threats … is used for protecting and maintaining the security of the governor and his staff and family and for maintaining the secure functioning of the governor's office."

Plunderbund turned to the Supreme Court after public-safety officials declined two years ago to turn over limited records involving threats against Kasich.

The blog argued that the security exemption involving a "public office" applied only to records involving the placement of cameras, building blueprints, the scheduling of security personnel and similar matters.

The court disagreed, saying that the exemption to the public-records act also involves the personal security of the governor and the need to protect him from "attack, interference, sabotage or terrorism."

Attorneys scoff at state health department's claim of non-existent records

From The Columbus Dispatch

For more than two years, Ohio Department of Health officials told judges and justices that it was nearly impossible — even under subpoena — for the agency to turn over past test results from Intoxilyzer 8000 alcohol breath-test machines.

Faced with an Ohio Supreme Court decision that could have made the $8,000 machines useless in testing drunken-driving suspects, the agency now says it expects to be able to turn over test results to defense attorneys by Dec. 1.

Over the years, some judges across Ohio have refused to admit test results from the Intoxilyzer 8000, ruling that it has not been proved scientifically reliable.

The Supreme Court ruled on Oct. 1 that DUI defendants are allowed to challenge the accuracy of their tests by obtaining data from previous results generated by the alcohol-test machine into which they blew.

Health officials had said it was a difficult technical and financial challenge to turn over years' worth of computerized data about previous drivers' test results and calibration tests from the oft-questioned testers.

Now, records provided in response to a request by The Dispatchshow that attorneys who since have issued subpoenas for test results are being told that "software is being created to access the requested records."

Reports on college crime are deceptively inaccurate

From The Columbus Dispatch

The crime statistics being released by colleges nationwide on (Oct. 1) are so misleading that they give students and parents a false sense of security.

Even the U.S. Department of Education official who oversees compliance with a federal law requiring that the statistics be posted on Oct. 1 each year admits that they are inaccurate. Jim Moore said that a vast majority of schools comply with the law but some purposely underreport crimes to protect their images; others have made honest mistakes in attempting to comply.

In addition, weaknesses in the law allow for thousands of off-campus crimes involving students to go unreported, and the Education Department does little to monitor or enforce compliance with the law — even when colleges report numbers that seem questionable.

The White House and some in Congress have noticed and are pushing for changes, including increased sanctions.

The law, known as the Clery Act, was enacted in 1991 to alert students to dangers on campus, but it often fails at its core mission, a joint investigation by The Dispatch and the Student Press Law Center found.

Portsmouth City Solicitor says job evaluations are public records

From The Portsmouth Daily Times

In a memo dated Dec. 19, Portsmouth City Solicitor John Haas responded to a legal opinion on Ohio public records and the pending city manager job evaluation.

"Councilman Kevin W. Johnson requested a written legal opinion on whether the documents generated by individual council members relating to the evaluation of the job performance of the City Manager is a public record subject to public disclosure," Haas wrote. "It is my legal opinion that the records are public records under Ohio statutory and case law."

... In the conclusion of his opinion, Haas states, "The job evaluations individually prepared by members of Council and any compilation or summary thereof are public records subject to production by the City Clerk pursuant to a properly submitted public records request."

South Euclid has paid more than $25K in legal fees for ongoing records dispute

From The Plain Dealer

South Euclid has paid its lawyers more than $25,000 since 2011 to defend the city against a taxpayer's public records lawsuits.

Law Director Michael Lograsso has earned about $8,300 directly from the disputes, and the city has paid the firm Nicola, Gudbranson & Cooper another $17,000, according to Finance Director James Smith. Some of the cost will be covered by insurance.

South Euclid property owner Emilie DiFranco has sued the city three times for failing to deliver public records she requested. DiFranco also filed a request for sanctions against council Clerk Keith Benjamin and Lograsso earlier this year.

Lograsso said a portion of the legal fees were incurred because DiFranco keeps appealing the courts' rulings.

Lograsso works for his own firm and part-time for the city. South Euclid pays him a $59,000 salary, plus $137.50 an hour for certain services.

The city pays outside firms $150 hourly. The law department spent about $775,000 from the general fund in 2012-13, and expects to spend $400,000 this year.

In February, the Ohio Supreme Court ruled in DiFranco's favor in two cases stemming from a 2011 records request. The city had to pay DiFranco up to $1,000 after she waited months for the documents, but it was not responsible for her attorney fees, the court ruled.

Who accessed FitzGerald's driver's license information? Impossible to tell

From The Columbus Dispatch

People with Ed FitzGerald's personal information accessed a state website to check on his driver's license months before his well-documented woes surfaced in public. And at least one of his county employees learned in early 2012 that the boss did not have a license.

But it's impossible to identify who used an Ohio Bureau of Motor Vehicles Web page, set up so that Ohioans can check on their own licenses, to look into the Democratic gubernatorial candidate twice last year and five times this year.

"I'm concerned about who accessed it. How much of my personal information did they have?" FitzGerald said. "These are important privacy questions that have ramifications for anybody, whether they are a candidate or not."

FitzGerald's campaign said six of the seven checks were unauthorized, including both in 2013. His campaign only once shared his date of birth, driver's license number and the last four digits of his Social Security number with a former campaign aide to run a check on Aug. 4 or 5 of this year after his driver's license problems became public.

All of that information is needed to access an individual's "unofficial" information on the BMV Web page, which shows only whether a license is valid and lists traffic convictions from the previous two years.

Mayfield Heights still can't explain why meetings were held privately

From The Plain Dealer

For five months, Mayfield Heights has been privately planning a new 15-acre shopping complex on Mayfield Road, shocking and upsetting business owners and residents who found out about the plans through the media. Now, some good government experts say the secret sessions could violate the Sunshine Laws, and the city is struggling to explain why they were kept under wraps.

Architecture firm URS Corp. and developer the Coral Co. met with Mayor Anthony DiCicco, Council President Gayle Teresi, council members Joe Mercurio, Don Manno, Bob DeJohn and Susan Sabetta; and several other city officials and residents including the service, building, finance and recreation directors to plan the redevelopment.

The majority of council members attended three of the four meetings, and at least two of them were "seated in the audience," the minutes note. The only members who did not attend were Paul Sciria and Nino Monaco.

DeJohn said he did not know the meetings were private.

"That was the mayor's call," he said.

Law Director Paul Murphy explained: "I'm their lawyer and it wasn't a public meeting, because it was not a meeting of council."

Dennis Hetzel, executive director of the Ohio Newspaper Association, called the lack of public information "very problematic."

Even if council members were not there, Hetzel said, the strategic planning committee itself could be subject to open meetings laws, because the law defines a public body as "any board, commission, committee, council or similar decision-making body of a state agency, institution or authority."

"If they are keeping minutes, that is circumstantial evidence they agreed it's a public body. It's not at Bob Evans shooting the breeze," he said. "You have all the council members being invited to this meeting, so that makes it even clearer."

Could Cleveland police keep body-camera footage secret? Ohio law is unclear

From The Plain Dealer

Hundreds of Cleveland police could be equipped with body cameras as soon as next year, but whether the footage the cameras capture would would be available to the public is unclear.

Ohio's open records law doesn't address whether video from the cameras could be kept secret. And any records not specifically exempted under state open-records law are typically required to be open for inspection by the public.

But police could try to invoke an exemption in state law that allows them to withhold records related to a police investigation, according to Dan Tierney, a spokesman for Attorney General Mike DeWine.

If that happens, Tierney said, state courts or the legislature would need to resolve the issue.

Earlier this year, the 12th District Court of Appeals in southwest Ohio ruled that footage from police cruiser dashboard cameras are investigatory documents, and thus are not public records. Right now, that ruling only applies to the eight counties included in the 12th district.

On the other hand, Tierney noted, the Ohio Supreme Court has repeatedly ruled that police incident reports don't fall under the exemption and must be released upon request.

Tierney said the dash-cam ruling wouldn't necessarily apply to videos from police body cameras.

OHIO ROUNDUP

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Democrats' lawsuit ends as Mandel gives up records

From The Columbus Dispatch

After more than three months and an Ohio Supreme Court filing, state Treasurer Josh Mandel turned over public records requested by the Ohio Democratic Party — on Election Day.

The Ohio Supreme Court (on Dec. 20) granted the Democrats' motion to dismiss their lawsuit seeking records from Republican Mandel after his office delivered the documents following sessions with a court-appointed mediator.

The Democrats sued Mandel on Sept. 3 after the treasurer's office failed to turn over records initially requested on July 18.

The records, largely associated with Mandel's hiring of two companies to conduct telephone "town halls" with Ohioans at a cost of nearly $130,000, consist of routine contracts, bills, purchase orders, agreements and other paperwork.

Democrats had accused Mandel, who won re-election on Nov. 4 over state Rep. Connie Pillich, D-Cincinnati, of using tax funds to promote himself in an election year. Mandel denied the charges.

Cuyahoga County Executive Armond Budish releases Ed FitzGerald's key-card records that were subject of public records fight with GOP

From The Plain Dealer

Cuyahoga County Executive Armond Budish on (Jan. 7) released records recording the dates and times when his predecessor, Ed FitzGerald, swiped his employee key card while on county premises during the last 18 months.

"In light of the fact that former Executive FitzGerald no longer uses County facilities on a regular basis, the Sheriff's Department has concluded that release of the information does not now pose the same security risks it did in 2014," Emily Lundgard, a county spokeswoman, said in an email.

After opting to run for governor rather than seek re-election, FitzGerald's last day in office was Dec. 31.

Last year, FitzGerald refused to release the records. County Sheriff Frank Bova, who reported to FitzGerald, said releasing the records could help establish a pattern of FitzGerald's whereabouts, which could put him in danger.

County spokesman Dennis Willard said it remains to be seen what impact the release of the records has on an ongoing public records lawsuit by the Ohio Republican Party before the Ohio Supreme Court. The GOP sued last July after FitzGerald, then a Democratic gubernatorial candidate, refused to provide the records to NEOMG.

Reynoldsburg withholds substitutes' names from 'Dispatch,' citing safety

From The Columbus Dispatch

Are substitute teachers who cross the Reynoldsburg Education Association's picket line in as much danger as police officers who have been threatened by drug and motorcycle gangs?

Reynoldsburg schools Treasurer Tammira Miller appeared to think so when she rejected an open-records request from The Dispatch for the list of substitute teachers who are replacing striking Reynoldsburg teachers. The newspaper wants to check the credentials of these public employees.

Teachers' names are typically a public record. But Miller said the district has a duty to protect the safety of the substitute teachers.

In a letter rejecting our open-records request, she cited a Columbus case in which a judge said that an attorney for members of the Short North Posse drug gang could not receive personal information about the police officers who had arrested the gang members. And she cited a case in which a judge said that Cincinnati did not have to disclose the names of police officers who had been in a shootout with a motorcycle gang.

Lyft, Uber want to keep Columbus license applications secret

From The Columbus Dispatch

Uber and Lyft want to keep parts of their applications to become licensed transportation companies in Columbus under wraps.

The two San Francisco-based companies wrote in court filings that all or parts of applications they filed with the city last month contain proprietary trade secrets that are exempt from Ohio's public-records laws.

Franklin County Common Pleas Judge Kimberly Cocroft granted Uber Technologies Inc.'s request for a temporary restraining order that bars Columbus from releasing three pages of the company's insurance policy on Friday.

Lyft Inc. filed for a similar order (on Sept. 2) that would shield its entire application, plus the applications submitted by potential drivers.

Neither company could be reached for comment.

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ASNE joins amicus brief in favor of immediate access to civil complaints

From the American Society of News Editors

ASNE joined an amicus brief drafted by the Reporters Committee for Freedom of the Press, which argues in favor of immediate access to civil court documents.

In this particular case, Courthouse News Service v. Planet, the brief highlights the importance of immediate access to civil complaints in the face of a decision by a federal District Court in California that there is no First Amendment right of access to these documents and, hence, there is no right to access civil complaints until the first court hearing in the case.

According to ASNE, their brief, filed with the United States Court of Appeal for the Ninth Circuit, argues that such a First Amendment right, or at least a common law right, exists and is necessary to ensure the public is informed about and can oversee and even participate in the case from the start.

'Crippling penalties' urged for drillers hiding fracking chemical lists

From Columbus Business FIrst

Some big, diverse names are speaking out on proposed EPA rules that could require oil and gas drillers to disclose the chemicals they use in fracking.

Comments from the New York Attorney General and commissioners in Portage County, Ohio, plea for federal regulation, while oilfield services giant Halliburton Co. and the governor of Wyoming want the EPA to butt out. The commenting deadline was Sept. 18.

Drillers generally oppose such regulations. They say their mix of chemicals used to get gas and oil out of shale is a trade secret. Other groups are in favor, because when accidents happen it's imperative to know what emergency responders are dealing with. Plus, nearby residents should know what's being pumped beneath them.

The Reporters Committee will sue people to help journalists

From The Columbia Journalism Review

Fair warning, all ye who interfere with newsgathering: The Reporters Committee for Freedom of the Press is getting ready to sue you.

The organization has hired its first litigation director, Katie Townsend, to bring lawsuits around the country in cases that affect access to information for the press and public.

Although the RCFP has provided legal assistance to journalists for nearly 45 years—developing media law guides, filing amicus briefs, issuing statements, answering questions, making referrals to outside counsel—not since the 1980s has the RCFP itself been active as a litigant. It is re-entering that arena now to help fill a void created as news outlets, strapped for resources, have retreated from some legal battles.

"It's in our blood," said Bruce Brown, the group's executive director. "This type of work is part of our history and mission, and now we're doing all we can to enhance it—to use our expertise to ensure that journalists can gather and report the news without interference."

The new position was created by rededicating funds that once supported a freedom of information director, who left the RCFP in 2013. To make the most of its resources, the organization will use several models to manage its litigation: handling cases in-house from start to finish; coordinating cases and dividing the labor with partners, such as law firms, law school clinics, or groups like the ACLU; and referring cases to outside counsel, the group's favored approach for the past 25 years.

Journalism and open government organizations send letter to Obama urging transparency

From the American Society of News Editors

Thirty-eight journalism and open government groups today called on President Obama to stop practices in federal agencies that prevent important information from getting to the public. The national organizations sent a letter to Obama today urging changes to policies that constrict information flow to the public, including prohibiting journalists from communicating with staff without going through public information offices, requiring government PIOs to vet interview questions and monitoring interviews between journalists and sources.

"The practices have become more and more pervasive throughout America, preventing information from getting to the public in an accurate and timely matter," said David Cuillier, president of the Society of Professional Journalists. "The president pledged to be the most transparent in history. He can start by ending these practices now."

The letter outlines other specific examples of the excessive information control, considered by some as a form of censorship:

- Officials blocking reporters' requests to talk to specific staff people
- Excessive delays in answering interview requests that stretch past reporters' deadlines
- Officials conveying information "on background," refusing to give reporters what should be public information unless they agree not to say who is speaking
- Federal agencies blackballing reporters who write critically of them

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.

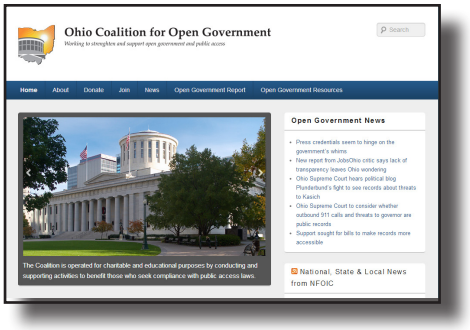
Donations to OCOG can be mailed to the address above. You can also submit donations online at www.ohioopengov.com.

Open Government Report and new 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 new 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.