



Ohio Coalition for Open Government OPEN GOVERNMENT REPORT

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Body camera bill avoids most public record minefields

By Dennis Hetzel

About three years ago, as the debate over the use and regulation of police-worn cameras exploded across the country, two things quickly became obvious to us at the Ohio News Media Association (ONMA).

First, it was inevitable that the Ohio Legislature would respond.

Commentary

Why? Bodycams became central to calls for greater accountability and transparency by the police. However, the cameras raise issues of personal privacy that are understandable and often highly emotional. Given those factors, we concluded legislation was a matter of “when,” not “if.”

Second, because we have been in this movie many times before with open records laws, we decided to act instead of react to avoid a really bad result.

(see body cameras, page 2)

Liberty Township trustees to turn over records on former fire chief

By Dean Narciso, The Columbus Dispatch

Liberty Township trustees voted 2-1 (on October 31) to release long-sought records related to its former fire chief.

An order the previous week by the Ohio Court of Claims prompted the township meeting. Judge Patrick M. McGrath ruled that the township “presents no valid explanation for its failure to either comply with the court’s entry of March 29, 2017, or seek a stay” after a ruling by Ohio’s 5th District Court of Appeals upholding the lower-court decision.

McGrath noted that the township would have faced further legal action, including contempt-of-court charges, had it not agreed to turn over the written notes of attorney

OCOG 25th anniversary fundraiser

More than 350 people attended the 25th anniversary fundraiser for the Ohio Coalition for Open Government (OCOG) on December 6, 2017. The fundraiser, headlined by bestselling author J.D. Vance, raised more than \$40,000 to support OCOG.

Many thanks to J.D. Vance for doing this fundraiser for OCOG. In addition, many thanks to all the fundraiser’s

sponsors. The fundraiser’s media sponsors are the Dispatch Media Group and ABC6. Gold sponsors are E.W. Scripps Co., Baker Hostetler, Frost Brown Todd, and Douthitt Communications. Silver Sponsors are AIM Media Midwest, Bryan Times, Faruki Ireland Cox Rhinehart & Dusing PLL, Roetzel & Andress, Cox Media Group Ohio, the Ohio Council of Retail Merchants, Sean P. Dunn & Associates LLC, The Plain Dealer/Cleveland.com, Wolfe Associates/Channel 10 Columbus, the Ohio Association of Broadcasters, Findlay Publishing Company, Marburger Law LLC, Vorys, Sater, Seymour and Pease LLP and Capitol Consulting.

For a complete list of sponsors, patrons, and friends of OCOG, go to www.ohioopengov.com/fundraiser. A video of Vance’s remarks can also be found at that link.



J.D. Vance (right) and Bob Kendrick, co-anchor of ABC 6 News, during the fundraiser.

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Body camera bill avoids most public record minefields

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Early policies that emerged from some Ohio police agencies reinforced concerns, as some departments around the state adopted local rules – in violation of existing law – that recordings only would be released at the discretion of the chief. Meanwhile, we grew more alarmed as other states codified that principle into law, making body-camera recordings closed, only available for release if the government chose to do so.

It's hard to imagine any other public records in which transparency, access and accountability matter more.

For the past two years, there has been excellent give-and-take among various groups. We emphasized the importance of the presumption of openness that is supposed to attach to all public records. We urged that any new exemptions be written as narrowly as possible.

We noted that the issues raised by the cameras are unusual but not unique. Existing laws to protect investigations, informant identities and other police matters already have broad exemptions under Ohio law.

On Nov. 20, “when” became “now” when Rep. Niraj Antani, R-Miamisburg, and Rep. Hearcel Craig, D-Columbus, introduced a bipartisan bill to regulate police-worn cameras. The bill represents a strong effort to respect both privacy interests and the critical need to have the accountability and transparency that only open records can create.

Under the bill, for example, videos related to officers’ use of force will be generally available as well most police enforcement activity in public places. Exemptions are mainly tied to recordings made in private homes or the private areas of businesses and those that show nudity, serious injuries, fatalities that don’t involve first responders and victims of sex crimes and domestic violence.

The bill doesn’t tell local police departments they have to use body cameras, but it does give them rules of engagement when they deploy them. Most importantly, it reinforces the presumption of openness.

House Bill 425 still has a long way to go. It’s never easy for us to support bills that add new secrecy to an open records law already bloated with exemptions – some truly unnecessary; others badly written.

Fortunately, this is an example of something the public wants to see more often in politics: A solid, thoughtful bill made possible by legislators who took the time to grasp a complex issue and hear from all sides.



Hetzel

Good news, bad news on open records legislation

Several statutes related to open records are moving through the Ohio Legislature.

The ONMA continues to oppose House Bill 8, which would remove the names of minors whose names appear in accident reports involving school buses. We are particularly concerned about the precedent this could set to undermine the long-standing rule that initial police incident reports, including traffic accidents, are public records.

We have made several reasonable compromise suggestions with no luck. We also are unhappy about confusing, unnecessary language being added to protect the release of individual medical claims information. While no one believes this information should be public, we maintain that existing law covers the concern. The new language is murky and could result in unwanted interpretations.

The bill has passed the House and is headed to the Senate floor, where we will again seek to amend the legislation. If the bill makes it to the governor’s desk as written, the ONMA will request a veto.

Here is the status of some other items we are following:

Mugshot sites

Gov. Kasich signed HB 6 into law, which makes it illegal to charge people for the removal of criminal or arrest records – something our members wouldn’t do. The bill is aimed at the

(continued above, page 3)

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websites that charge hundreds of dollars to remove booking photographs of arrests. ONMA worked with the sponsor, Rep. John Barnes, to craft acceptable language.

Destruction of arrest records

HB 64 is a well-intentioned bill that seeks to help people wrongly arrested by police. However, the ONMA opposed the expungement (destruction) of the arrest records as the answer for a number of reasons, particularly because destruction of these records provides no accountability for why the government wrongly accused

someone. The bill sponsors have proposed a compromise that would keep most of the information open.

Campus free speech

Many news organizations are covering controversial campus speakers and how college officials are dealing with campus free speech issues. HB 363 makes it harder for local officials to block speakers based on the content of their speech, possible security issues and other concerns.

Ohio Citizen Participation Act

Ohio would have a national model

“anti-SLAPP” bill under this legislation that we strongly support. Senate Bill 203 just had its first hearing. The bill creates an expedited court process to dispose of cases against those who are sued for exercising their free-speech rights under the U.S. and Ohio constitutions.

ONMA and other supporting groups recently testified on the bill.

Dennis Hetzel is executive director of the Ohio News Media Association and president of OCOG. Send email to dhetzel@ohionews.org.

OCOG joined precedent-setting Liberty Township case

The Ohio Coalition for Open Government joined in a precedent-setting case in support of two citizens in Liberty Township, Delaware County, who were in a battle for notes related to an investigation of the township’s former fire chief. *(For more on the case, see story on page 1)*

Dennis Hetzel, OCOG’s president, said the case was particularly significant because the citizens, James Hurt and Mark Gerber, “had a 100 percent victory” in the Ohio Court of Claims.

The new Court of Claims process went into effect in 2016.

“For the first time, Ohio citizens have a way to appeal denials without the huge expense of hiring an attorney and initiating expensive litigation,” Hetzel said. “That’s what levels the playing field. It should be very difficult for the government to prevail when the full Court of Claims affirms rulings in cases that seem this clear.”

Hetzel said the township had refused to concede that an investigator’s notes that were used in the determination of the chief’s status are public records.

“Once we saw that the Ohio Township Association and others were joining

the township’s appeal, we felt it was particularly important for OCOG to support the two citizens, who are representing themselves,” Hetzel said. “Under the township’s logic, critical records could be kept secret by hiring a private person to do the government’s business.”

Attorneys Erin Rhinehart and Christopher Hollon of the Faruki law firm in Dayton represented OCOG following the vote of the OCOG Board of Trustees to file the amicus brief supporting the citizens.

How to file a public records complaint through the Ohio Court of Claims

The Liberty Township public records case *(see story, page 1)* was originally filed through Ohio’s new public records mediation process, which went into effect in 2016. The mediation process offers Ohio citizens a low-cost and timely process to seek the release of public records when government entities deny their initial request.

To use the public records mediation process, do the following:

Step 1: Download and submit the Public Records Access Complaint form from www.ohiocourtclaims.gov/public-records.php.

The cost to file a complaint is \$25.

Step 2: The Court of Claims staff will determine if your complaint meets

minimum legal requirements. If not, they will either return it to you so you can correct any errors or summarily dismiss the complaint. If your complaint meets legal requirements, a Court attorney will review your request and contact you. The staff attorney will also contact the public office for an explanation of why your request was denied. This contact frequently resolves the problem. If it does not, then your complaint will be referred for formal mediation.

For more information on the process, go to www.ohiocourtclaims.gov/public-records.php.



Liberty Township to release records

Continued from page 1

said the contents of the notes might create “some serious collateral damage to our staffing as a result of what we are going to see in these.” She declined to elaborate.

Once the notes are obtained, the county said it will redact protected information, such as medical histories.

Jensen, who agreed to be demoted to oversee fire prevention, was accused of poor management and an inability to take direction from trustees.

“I have the concern that trustees may have directed Duckett to a predetermined outcome,” said Mark Gerber, the township’s former fiscal officer who had originally requested the notes.

Open Government News and Commentary

Ohio lawmakers chip away at public records access

By Randy Ludlow, Columbus Dispatch

Sunshine lawyer Jack Greiner fears Ohio lawmakers may be out to “lap the alphabet twice” when it comes to government secrecy.

In the Ohio Revised Code, exemptions to the state’s public records law are labeled by letter — a, b, c, etc. The most recent exemption — the 31st — is designated (ee) in the law.

Greiner, a Cincinnati lawyer who specializes in open-government cases, fears (aaa) may not be far behind as legislators continue to whittle away at the public’s right to know.

Yet Ohio has a solid public records law compared with many states, said Dennis Hetzel, executive director of the Ohio News Media Association.

And the state largely has avoided some of the more-draconian efforts to restrict access to records, as seen in other states, amid fears of identity theft and concerns about privacy, he said.

But the ongoing legislative mindset favoring secrecy over transparency is like death by a thousand paper cuts, Hetzel said.

“Most of the time, what we are seeing are generally well-intentioned efforts to

carve out new, sometimes small, new exemptions. But, in the aggregate, it is increasingly hard to manage a law with an ever-growing list of exemptions,” Hetzel said.

A case in point: The Ohio House of Representatives voted 95-2 to pass a bill, now pending in the Senate, to forbid the release of the names and other information about children whose school buses are involved in accidents.

Legislative sponsors said the measure is designed “to protect our most vulnerable constituents” who could “fall victim to heartless crimes” if their names and addresses were exposed.

Hetzel said the bill was a reaction to “a single constituent who was bothered by mail he received from attorneys” after his child was involved in a school bus crash. “People are perceiving a problem without offering evidence there is a problem,” he said. Journalists need access to such information to provide accurate, credible reporting, Hetzel said.

Five other pending bills would withdraw more records from the public, including a measure that would allow felons granted gubernatorial pardons to wipe public records clean of their conviction and make it easier for lower-

level felons to seal records of their crimes.

“The greater effect of this is, we are chipping and chopping away at the core of public records and the presumption of openness,” said Hetzel, who also is president of the nonprofit Ohio Coalition for Open Government.

The General Assembly also is expected to move before the end of the year on legislation affecting how videos from police body cameras are treated as public records, said Hetzel, who lobbies lawmakers to preserve public access to records.

The footage must be a public record, but there are concerns that must be addressed — such as potentially withholding video captured inside private homes and of minors — to craft a workable bill, he said.

Randy Ludlow is a journalist with The Columbus Dispatch, where he covers government and open government issues. He previously served on the board of directors of the Ohio Coalition for Open Government.

School board conducts business in the dark

By Alan Miller, Columbus Dispatch

The Reynoldsburg Board of Education and its lawyers tried to hide an unusual expenditure of public dollars and got caught.

It’s remarkable that public officials would think that it’s a good idea to sneak a potentially controversial spending measure past the public.

Even more remarkable is that this is not the first time we have seen such stupidity by public officials and their lawyers, and undoubtedly it won’t be the last.

That’s one of many reasons we all should be grateful that a reporter asked a couple of simple questions: What was that vaguely worded resolution you voted to approve? And can I have a copy of the public record that provides the details?

What Dispatch reporter Shannon Gilchrist found was that the Reynoldsburg school board voted 3-2 to approve an agreement with Superintendent Tina Thomas-Manning to make her a consultant from her home for a full year for \$100,000 plus benefits.

In return, she agreed to leave the office and not sue the district.

It was presented for a board vote as “the agreement with Ms. Tina Thomas-Manning as presented.” That’s it. No further detail. The vote came after the board met in a private session.

A board member who was asked about the agreement and the vote said that the district’s legal counsel, Bricker & Eckler, “really pushed the fact that we aren’t supposed to talk,” and that all questions were to be directed to the central office.

Think about that for a minute. An elected public official says she can’t discuss a public vote on public business because a lawyer advised the board not to talk about public business.

The settlement itself included a section titled “MEDIA COMMENT REGARDING THIS AGREEMENT,” which says that “the parties will not comment on this settlement agreement unless required by law to do so, and instead will present to the media and any media representative the joint statement attached as Exhibit B.”

That statement added a little detail, noting that the district would “continue to utilize Ms. Thomas-Manning’s expertise in the educational field as a consultant, and following that year she will be provided an

(see school board, page 5)

Open Government Editorials and Commentary

Ohio takes swing at ‘SLAPP’ suits

Editorial by The Canton Repository

In more than half of the United States, legislation exists to protect citizens from frivolous lawsuits filed to suppress First Amendment rights to free speech.

Ohio is not among those states, but that soon could change.

State Sen. Matt Huffman, a Republican from Lima, (in early October) introduced a bill — the Ohio Citizen Participation Act — designed to expedite the court process of disposing of lawsuits that target citizens simply for exercising their right to comment publicly.

“First Amendment rights are foundational to a free and functioning society,” Huffman said in a news release distributed by the Ohio News Media Association, a supporter of the bill. “This legislation takes important steps to ensure that citizens’ speech and expression can never be quashed by legal tricks and protracted courtroom battles.”

Ohio’s bill is modeled largely after similar legislation in Texas, where the law passed in 2011 is seen as among the strongest in the country. In that state, when someone is sued for expressing an opinion about a “matter of public interest,” that defendant can petition the court to expedite dismissal of the lawsuit. Successfully ending a frivolous suit can save defendants time and money versus

protracted litigation.

The mere threat of a possible long legal battle can be enough to suppress free speech, advocates for the Ohio Citizen Participation Act and similar laws contend.

“This is not a liberal or conservative issue. All citizens have a stake in the right to freely express themselves,” said Dennis Hetzel, executive director of the Ohio News Media Association.

Some key points about the bill:

- It does not expand libel and defamation laws.
- You’re still accountable for what you say and publish.
- The Ohio Citizen Participation Act would dispose of cases that judges determine the defendants eventually would win if they had the time and money to stay the course. In essence, these would be summary judgments for the defendants in a speedier fashion than currently exists in Ohio.

“These are lawsuits often designed to shut people up and send a warning to others not to speak out,” Hetzel said of the bill’s target.

The blog SlappedInTexas.com, which follows the issue in that state, describes the legislation and the need for it this way:

“Citizen participation is the heart of our democracy. Whether petitioning the government, writing a traditional news article, or commenting on the quality of a business, the involvement of citizens in the exchange of ideas benefits our society.

“Yet frivolous lawsuits aimed at silencing those involved in these activities are becoming more common, and are a threat to the growth of our society. ... These lawsuits are called Strategic Lawsuits Against Public Participation or ‘SLAPP’ suits.”

An example SlappedInTexas.com cites as a SLAPP suit successfully dismissed: A group of homeowners who spoke out on an online forum about their homeowner’s association was sued for libel by the association.

Ohio Domestic Violence Network is another group supporting the measure, saying that misuse of the court system can be a tactic abusers use in their attempt to exert control over victims.

Hetzel said other examples of ways the law could protect speech include landlords trying to prevent tenants from posting critical comments on social media or companies suing consumers for protesting business practices.

We applaud Huffman for bringing this pro-First Amendment bill to the Ohio Senate and urge the chamber to give it strong consideration.

School board conducts business in the dark (continued)

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unpaid leave of absence for one year,” but the statement said nothing about the cost to taxpayers.

Clearly, there are lawyers who think this is sound practice when it comes to avoiding a court battle.

But it’s important for public officials to remember that lawyers work for them, not the other way around. And the officials are responsible for seeing the bigger picture. That includes understanding that in the court of public opinion, any effort by public officials to hide public information generally blows up in the faces of those who try it. Because we always find out.

Sometimes, we or other members of the public find out because we sit in

meetings, read meeting agendas, listen to speeches or hear public officials utter statements that simply aren’t clear, don’t add up or don’t make sense. And when we ask for clarification or documentation to explain what we’re reading or hearing, the truth comes out.

Other times, we hear about such moves because some good soul with a strong moral compass sees or hears something that he or she knows is wrong and should be exposed. These days, some people attach the pejorative label leak to such tips.

I call that bravery and doing the right thing, because to stand by and say nothing while someone in authority seeks to mislead the public, or worse, do something illegal, would make that person complicit.

And the consequences of hiding a

controversial decision are far greater than being honest and transparent about that decision in the first place.

Such clumsy moves also can be costly in other ways. The Dispatch once sued a rural county prosecutor because he refused to release a public record. He didn’t think we should have it, regardless of what the law said, so he dug in his heels and we sued him. When he lost the lawsuit — and also was required by the court to pay our legal fees — he went with hat in hand to the county commissioners seeking money to pay the bill.

No dice, they told him. You made a bad decision; you pay the bill.

It was a painful lesson — one that I hope he and other public officials never forget.

Open Government Editorials and Commentary

Ohio U. advisory group is almost ‘parody’ of itself

By **Conor Morris, The Athens News**

The volunteer members of the work group on Ohio University’s “Freedom of Expression” policy voting unanimously to keep the group’s meetings closed to the public says a lot about higher education in general. The irony is clear.

It’s also not surprising, however, knowing OU’s track record on transparency with regard to public meetings and public documents in the last three-plus years that I have covered the institution.

The interim “Freedom of Expression” policy at OU, in case you’ve been living under a rock the last few months, bans protests and other demonstrations inside university buildings. That policy, along with another interim policy about “Use of Outdoor Space,” has drawn much ire from the university community, has been condemned by all of its major constituent senates, and even has been called “unconstitutional” by the ACLU of Ohio.

Given all of that negative attention, I do understand the context behind why the members of the “president’s policy advisory group” wouldn’t want to let people in on their discussions. The group was formed by OU President Duane Nellis to go through what likely are mountains of feedback provided to the university on the interim policies, and then provide a recommendation on how OU should move forward with a new policy.

But given the manner in which the policies on “Freedom of Expression” (the name is almost Orwellian, no?) were developed by OU’s legal office – basically in a vacuum with no input from faculty or student constituencies – the burden is on the university, and by extension this policy advisory group, to keep these discussions in the sunlight as much as possible.

The most unsettling thing about the decision to keep the group’s doors closed is that nobody on the committee has particular expertise on the First Amendment. As OU journalism professor Bernhard Debatin pointed out during a Faculty Senate meeting, the group’s composition is “lopsided” in that it has very few student and faculty representatives (two students and two faculty) for a policy that largely affects just those groups. In total, the group includes the university police chief; its senior director of communications; the director of Baker University Center; a

legal affairs representative; the chairs of its Student and Graduate student senates; the chairs of the Administrative and Classified senates; dean of the Scripps College of Communication; one Faculty Senate designee; and the chair of the OU Department of History.

The group’s unanimous vote to keep the meetings closed (while providing media availability and meeting minutes after said meetings) came after discussion about “transparency” being the group’s core value, Scripps College of Communication Dean Scott Titsworth said in a letter.

“In addition to transparency, the group adopted values that all voices should be heard and to show respect for others,” Titsworth wrote. “With unanimous consensus, the group decided meetings should continue to be held in private in order to accomplish the work at hand in an efficient manner and meet the expected delivery deadline for recommendations.”

Former Athens resident and OU student Jon Peters expressed extreme disappointment in his alma mater when he heard that bit from Titsworth. Before leaving Athens, Peters wrote a column for The A-NEWS, and is currently assistant professor with the Grady College of Journalism and affiliated assistant professor in the School of Law at the University of Georgia.

Peters said while the jury is out on whether or not the group will be forced by Ohio’s public meetings law to meet openly, the group should have chosen to meet in public regardless.

“It has chosen not to do so, for reasons so absurd that they should be written in crayon,” Peters wrote in a comment. “The group acknowledged the importance of transparency, then decided to meet secretly. And no less than the Scripps College of Communication dean, the group’s convener, said efficiency justified the secrecy. First, a process involving public participation will almost always be less efficient than a process not involving public participation. Second, that’s a reasonable price for a public university to pay to be respectful of its community members and to encourage public input and confidence in the group’s work – and to be accountable for it.”

When I asked Titsworth how the meetings would become more efficient by closing the doors to the public, he

responded in an email: “Our primary tasks require the group to quickly establish a culture for open dialogue where ideas are tested, counter-viewpoints expressed, opinions challenged, and sense-making narratives explored,” he said. “Ultimately, we will create work products to be widely distributed and available for public scrutiny. Because the group members have not worked together in this capacity previously, it is our belief, through consensus, that we can best establish such a group culture through private discussions.”

Titsworth also noted that the group’s members have “complete freedom” to discuss its work outside the meetings.

I don’t buy Titsworth’s reasoning here. Given the sheer amount of bad faith generated by the university by shoving this policy into place over the summer, the onus is on this policy group to demonstrate that it’s listening to all comments on the policy while developing a policy that will best serve all campus constituents (which, by the way, includes Athens residents and other campus users who aren’t directly affiliated with OU, who are not represented on this group).

I also fail to see how letting members of the public sit down and listen to the group’s deliberations will in any way impede expediency. You don’t have to allow public comments. If this were a OU Board of Trustees meeting, I wouldn’t expect to be permitted to interrupt that body’s work with questions and comments.

Alas, none of this is surprising. OU has a history of convening “advisory groups” that are composed of campus constituencies but are closed to the public. The Budget Planning Council, for example, which goes through the very important task of sifting through the university’s financial decisions, has long been closed to the public (despite posting meeting minutes online and having press conferences after the meeting).

Jim Phillips, former associate editor of The Athens NEWS, was arrested while covering a similar advisory group meeting devoted to exploring the university switching from semesters to quarters in 1997. The university argued that the group’s meeting was closed to the public, and after he declined to leave, a OU police officer escorted him out of the meeting.

Phillips, now a communications

(see **Ohio U advisory group**, page 7)

Don't turn out grow light, err on side of transparency

Editorial from The Canton Repository

When Ohio's new medical marijuana law officially took effect in September, we urged local governments to prepare for the onslaught of potential processing facilities, dispensaries and other marijuana-related businesses that could crop up in their communities. We called for local leaders to give "lengthy and thoughtful" deliberation about the potential benefits and consequences of such businesses. We've seen communities like Lake and Plain townships, North Canton and Louisville do just that.

After a report out of Canal Fulton that an "unnamed" individual has pitched the city on being home to a medical marijuana processing facility, perhaps that message bears repeating.

More troubling than City Council members apparently being caught off guard by the prospect was Mayor Joe Schultz's proposal that council members could meet in pairs with the unnamed developer to avoid Ohio's open meetings laws. Schultz

essentially said that by meeting in smaller groups in which no quorum of council exists, members could meet privately without telling the public or even inviting the public.

With all due respect to the mayor, that's not how things are supposed to work. Not only does his suggestion fly in the face of the spirit of the state's open meetings laws, we don't believe it's a legal option. Per state law, "a public body may not circumvent the requirements of the Act by setting up back-to-back meetings of less than a majority of its members, with the same topics of public business discussed at each." They are what's known as "round robin" or "serial" meetings, and they are illegal.

As Canton Repository correspondent Joan Porter reported, "Most council members were willing to do so (meet) and noted the benefits of medical marijuana, increased revenue from city income taxes, strict regulations regarding a marijuana processing plant and that the plant was not a retail outlet."

State lawmakers made the right call last year when they legalized medical

marijuana while placing tight regulations on all aspects of it. Thousands of Ohioans suffering from cancer, epilepsy, post-traumatic stress disorder and other qualifying medical issues might find relief through the use of medical marijuana once the laws are implemented fully.

This will result in economic benefits for the state and for some communities. Though the state will control who receives medical marijuana licenses, local governments retain control over whether such businesses will be permitted to operate in their jurisdictions. Such decision-making should be made with the community's interests in mind. Discussions with "unnamed" individuals about potential business opportunities should be held in the open, for all to see — not behind closed doors, as Canal Fulton's mayor has suggested.

Canal Fulton Law Director Scott Fellmeth is on the right track. He urged council to wait until a proposal has been made to meet on the issue. Such a proposal, and such a meeting, should be open to the public.

DataOhio bill supports government transparency information

Editorial from The Columbus Dispatch

We hope this is the year that Ohio lawmakers finally will OK a system that makes it possible for the public to look at government spending data and actually make sense of it.

This is the third General Assembly in which Rep. Mike Duffey, R-Worthington has co-sponsored bills to create a database that would not only list expenditures by participating governments, but would put them in a simple, standardized format, allowing easy comparisons.

That's a key point, because the public currently has access to plenty of data through Ohio's open-records laws. State Treasurer Josh Mandel's Open Checkbook project has put raw spending information from state agencies, plus townships, cities and villages, online, making such information easier to find.

But snapshots of spending have only limited value if they can't be analyzed — for example, compared year to year or city to city.

The bill also would create a body called the DataOhio Board, to meet regularly and set standards for how data is to be presented.

It would not require local governments to participate, but would encourage them, by providing \$10,000 grants to cover the cost of putting the data online initially.

The current vehicle is House Bill 3, and it had a hearing Sept. 20 before the House Finance Committee. Both previous DataOhio initiatives passed the House but died in the Senate.

The bill has the backing of the Ohio News Media Association, the state auditor and state librarian, plus some economists. The Ohio Municipal League also has signed on, which is notable because in previous efforts, some cities and villages have been leery of making their spending quite that easy to analyze.

What if it turns out they're spending way more for road salt or have far more employees per capita than a neighboring city, and everyone can see it?

Exactly. DataOhio is meant to give taxpayers, even those who aren't CPAs, the ability to judge how their government is operating, in the context of the whole state. It's the surest way to prod governments to operate as efficiently and effectively as possible.

Ohio U advisory group almost 'parody' of itself

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specialist with OU's Heritage College of Osteopathic Medicine, recalled in a brief interview recently that it was a "judgment call" at the time for him (he stressed that he was only speaking in his capacity as a former A-NEWS journalist).

"My gut instinct was that they were discussing something of significance to the community," Phillips said, explaining that the group was going to advise the OU Board of Trustees on the matter.

The charge of criminal trespassing was ultimately dropped against Phillips.

There's not enough space in this column to go through the lengthy court decisions in Ohio that relate to the state's Open Meetings Act, and as Peters noted in his comment, that's not really the point. The Act doesn't require the policy advisory group to keep the meeting closed.

"It's as if Ohio University set out to create a free-speech group that would be a parody of itself," Peters said.

I tend to agree.

Open Government Editorials and Commentary

Open the shades on charter spending

Editorial from the Columbus Dispatch

No function of state government is more important than its constitutional obligation to “secure a thorough and efficient system of common schools throughout the state.” Education is the bedrock of democracy. That is why the Ohio Constitution, since 1851, has obligated the state to provide an education to each of its citizens.

How thoroughly and how efficiently the state fulfills this mandate should concern every Ohioan, every year, every generation.

But Ohioans’ ability to judge the state’s performance is threatened by state lawmakers’ willingness to hide from public view how the charter-school industry spends a sizable portion of taxpayer dollars.

In an era of privatization of much of primary and secondary education, taxpayers should insist that state lawmakers provide complete transparency of the expenditure of public funds for education.

State Rep. David J. Leland, D-Columbus, has introduced legislation to accomplish this goal. In fewer than 100 words, the bill declares “funds that the department of education pays to a community (charter) school or nonpublic school . . . are public funds and shall be subject to the same requirements related to permissible

expenditures and audit by the auditor of state as public funds allocated to school districts.

“If a community school uses public funds to pay for services of an entity to manage the daily operations of that school or to provide programmatic oversight and support of that school, those funds maintain their status as public funds upon transfer.”

In recent years, Ohio earned an unwelcome reputation for having the nation’s worst oversight of the charter-school industry. No surprise, then, that Ohio has had some of the nation’s worst-performing charter schools.

Responding to an avalanche of criticism, including from the operators of good charters, in October 2015 the General Assembly passed legislation (House Bill 2) to address some of the problems.

That legislation requires management companies receiving more than 20 percent of a school’s annual revenues to provide an accounting of expenses in 19 categories, such as aggregate wages, school supplies and transportation.

However, the bill didn’t go far enough. Why allow expenditures falling below a 20 percent threshold to escape scrutiny? There is no legitimate reason to prevent the taxpaying public from tracking each and

every dollar it spends for education.

Upon introducing his bill, Leland correctly stated: “Ohio taxpayers deserve a full and complete accounting for every one of their hard-earned dollars invested in education, whether the money is directed to public school districts or charter schools.

“Charter schools and their management companies shouldn’t be able to hide their spending of public funds behind closed doors. This bill will close a loophole in state law and help ensure charter schools in Ohio operate in a transparent, accountable manner.”

Honest, well-performing charters and nonpublic schools have nothing to fear from transparent bookkeeping. In fact, operators of many of Ohio’s best-performing charters have urged state lawmakers to insist on full transparency. Failure to do so creates a cloud of suspicion over all of Ohio’s charter schools.

Ohio was a pioneer in adopting a constitutional mandate guaranteeing an education to each of its citizens. Many states followed Ohio’s lead, adopting similar language in their constitutions.

In the 21st century, unfortunately, Ohio has been the opposite — a laggard — in guaranteeing that its citizens get a full and complete accounting for that education.

State’s narrow view of time shields public records

By Darrel Rowland, Columbus Dispatch

Journalists usually get results when they respond quickly to a major story.

But not always — especially when state government is involved.

When state Sen. Cliff Hite resigned (in October) after admitting sexual harassment of a female legislative aide, Dispatch legislative reporter Jim Siegel and a handful of others who cover the Statehouse immediately asked for public records on the case.

But the key memo detailing the aide’s account of repeated unwanted encounters with the Findlay Republican went not to those who asked first, but to news organizations that filed requests the following day or later.

How did that happen?

The first requests from The Dispatch and others came on Oct. 18. It was acknowledged on Oct. 19 by Mark Flanders,

head of the Ohio Legislative Service Commission: “We have begun examining our records for those responsive to the request.”

Turns out that the detailed memo also was dated Oct. 19. However, The Dispatch didn’t get it because Flanders limited his search to records on hand as of the date of the request — despite not beginning that search until the day the memo was prepared.

But because other requests were dated Oct. 19 or later, they got the memo because Flanders’ search period started on the day those requests were received — which was the day the memo was prepared or afterward.

Media organizations have had similar upside-down experiences with other state offices, as state lawyers say that a request for public records cannot be ongoing. We journalists almost might concede that such

a practice might meet legal technicalities, but the spirit of transparency built into Ohio’s open-government laws is being violated. So is the long-forgotten concept of government workers being “public servants.”

Would you be satisfied if, on Thursday, you sent someone who worked for you to get an important document you had paid for, and the employee obtained the document on Friday — but said, sorry boss, you aren’t getting it because it wasn’t available when you asked on Thursday?

The practice is causing some journalists to make daily public records requests to make sure that public officials aren’t using this dodge to deny public records to the public.

Cleveland’s public records belong to the public

Editorial from The Plain Dealer

The city of Cleveland needs to do far more to let the sun shine in when it comes to public records. Fourteen of the 39 public-records complaints filed with the Ohio Court of Claims since a new enforcement system took effect (in late 2016) were complaints about how Cleveland handled public-records requests.

Most of those cases have yet to be adjudicated so Cleveland officials say they can’t comment on them.

Cleveland scores high on public records complaints

City spokesman Dan Williams said the city gets hundreds of records request a week and that “some are cleared up immediately ... but not all can be,” because they require hundreds of documents or are cases still under investigation. The city is

working hard to improve its public records operations, he said.

That’s good. But the city of Columbus had zero complaints against it in the last six months.

Cleveland Mayor Frank Jackson needs to insist on an immediate re-evaluation of how the city handles public records requests -- not just this week, which is Sunshine Week, a week set aside to promote open government, but year-round.

True, Cleveland isn’t alone in its lackadaisical attitude toward releasing public records to the public.

Ohio Auditor Dave Yost reported recently that 357 cities, villages, school districts and other local governments in 2016 received 414 public-records citations for failing to undergo mandatory public records training or follow Ohio’s public records law the state sunshine law

requires municipalities to keep complete records and write formal policies on record retention.

Hoarding documents that rightly belong to the public -- including police reports, council minutes, budget information and appropriately redacted personnel information -- is against the law and must stop.

Of the 14 cases filed against Cleveland, cleveland.com’s Eric Heisig reports that three were resolved after the city turned over records, and that in two of the remaining 11 cases, records also have been released.

That leaves nine pending cases, five of which were filed by cleveland.com reporters.

The city’s sloth-like response is indefensible.

Ohioans should never have to worry about their ability to get public documents.

ECOT doesn’t make it easy to attend public meeting

By Bill Bush, Columbus Dispatch

Like any public meeting, the ECOT school board meeting is supposed to be open to anyone who wants to attend. But trying to get into the building and then figure out what the unelected body is doing was a challenge (on the night of Oct. 24) at the online school’s posh South Side headquarters.

Board committee meetings began at 6 p.m. in the building off of South High Street, its hallways decorated with large photographs of Ohio’s GOP leaders: Gov. John Kasich, Auditor Dave Yost, Ohio Supreme Court Justice Terrence O’Donnell, lawmakers and others. But the section of the building where the committees were meeting was locked up tight.

After The Dispatch was able to gain entry to the building with the help of a security guard, a Columbus police officer working a security detail ordered the newspaper out, saying the committee meetings were not public. The Dispatch informed him that, under Ohio law, committee meetings are, in fact, open to the public. Eventually an ECOT employee allowed the reporter into the committee meetings, already in progress.

The board was being briefed that ECOT had repaid the state almost \$14 million in tax dollars in the past

four months, through deductions from the state’s educational payments for online students, and that ECOT has an employee pension liability of \$137 million. ECOT has said it will close if the state Supreme Court doesn’t order Ohio to pay its bill for students it couldn’t document being actively enrolled.

Then the board meeting began, with members moving to a different, unlocked, part of the building.

The board immediately closed the meeting to the public —a Dispatch reporter was the only outsider present — for an executive session with an attorney handling the lawsuit against the state Department of Education. The session lasted close to an hour and a half. Among those in the closed meeting was Scott Kern, chief strategy officer for Altair Learning Management, the for-profit management firm owned by ECOT founder William Lager, which ECOT has paid tens of millions of dollars.

The board reopened the public meeting and took action on several board agenda items, such as changing policies on truants and dropouts. None of the details of these actions could be fully discerned because ECOT doesn’t provide copies of its agenda items being voted on, and its website’s electronic agenda locks down the documents, making them inaccessible to the public.

The board approved a five-year financial forecast with almost no debate. Brittny Pierson, who runs ECOT, said no copies of documents related to board actions could be provided following the meeting, including the five-year forecast or the policies. She suggested that The Dispatch get in touch with ECOT (the next day).





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Bill seeks balance on release of police body-cam videos

From The Columbus Dispatch

Legislation spelling out when police body-camera videos will be released to the public — or not — strikes a balance between privacy and transparency, advocates say.

The bill unveiled on (Nov. 20) by sponsoring state Reps. Niraj Antani, R-Miamisburg, and Hearcel Craig, D-Columbus, would declare that videos from body-worn cameras are public records that must be provided to Ohioans on request.

The bill makes clear that the public has a right to the release of videos in which police officers kill or seriously injure suspects in all circumstances, regardless of whether it's a private home or on the street.

However, the legislation contains several exemptions when the videos captured by police would not be released, such as videos shot within businesses and private homes and those that show a victim of a sex crime or domestic violence and dead, seriously injured or naked subjects.

Advocates view police body cameras as increasing officer accountability for their actions while also potentially protecting officers against unfounded allegations of abuse and misconduct.

"It's the Wild West right now," with law enforcement agencies differing in their approaches to release of video from body-worn cameras, Antani said. "It was very important to protect privacy interests" by introducing a bill to control video release statewide, he said.

Columbus Mayor Andrew Ginther joined the Statehouse news conference to describe the city's commitment to

police body cameras as "increasing accountability and transparency on both sides of the camera." He supports the bill for its common-sense approach.

Columbus, which so far has rolled out cameras to 501 police officers, is spending \$9.1 million to equip a total of 1,300 officers with the \$735 body cameras by the end of 2018, said Cathy Collins, an assistant public safety director. Computer storage of archived digital video accounts for nearly \$4.2 million of the spending..

Ohio Supreme Court allows quick sealing of dismissed cases records

From The Associated Press

The Ohio Supreme Court has ruled that criminal cases can be sealed immediately on their dismissal even if charges could be refiled later.

The court said (Sept. 27) that state law only requires judges to determine if a timeline for refileing charges has expired.

The unanimous decision said Ohio law doesn't prevent judges from sealing records if the timeline hasn't expired. The ruling settled disagreements between two lower courts.

The decision upheld the 2015 request of a man in Fairfield County to seal records in his case after charges including arson, aggravated menacing and domestic violence were dropped.

Three Ohio colleges and universities post spending data on OhioCheckbook.com

From The Plain Dealer

Three Ohio colleges and universities put their expenditures on OhioCheckbook.com on (May 16) — one year after state Treasurer Josh Mandel announced five schools would join the effort.

Mandel said the schools' differing accounting systems and student privacy laws and policies made preparing expenditure data more time-consuming than for cities, villages and other entities that use OhioCheckbook.com.

"It was more difficult, not because universities were giving us a hard time but because of the nature of how the finances are structured," Mandel said during a Tuesday news conference.

Three schools' data went live (on May 16): Bowling Green State University, Central State University and Central Ohio Technical College. Miami and Wright State universities were expected to go online (later this year).

The data excludes student-identifying information, which has been a challenge given many students are also school employees, said Bruce Johnson, president of the Inter-University Council of Ohio. The colleges and universities also use a variety of accounting software systems, and information has to be extracted differently from each in order to display properly on OhioCheckbook.com.

Mandel's office launched OhioCheckbook.com in December 2014 with state expenditures. In 2015, local governments and school districts were invited to post their expenses to the website.

The treasurer's office is footing the bill for local governments and universities with savings from Mandel's term in office. Mandel's office plans to spend about \$1.3 million a year on the program, through a contract with California-company OpenGov.

State keeps medical marijuana grow applications secret

From The Cincinnati Enquirer

Who applied to grow medical marijuana in Ohio? The state isn't saying.

After legalizing medical marijuana last year, the state is setting up a massive program to oversee the businesses who grow and sell marijuana as well as

doctors who recommend it to patients.

Those who want to grow the drug must apply with the Ohio Department of Commerce, which has already collected applications to be one of Ohio's 12 small-scale medical marijuana farms. But when The Enquirer requested those applications, seeking to report where marijuana growers might be located, the state said it didn't have to share the applications with the public right now.

"The requested applications and cover sheets are not public records because the Department of Commerce has not yet used the documents," Ohio Department of Commerce attorney Brian Peters wrote in a letter to The Enquirer.

Simply having the applications isn't enough to make them public records, Peters wrote. The department must have "utilized or relied" on them before it has to release them, even with businesses' secrets redacted, he said.

Ohio law doesn't support the state's argument, Enquirer attorney Darren Ford said.

"Transparency in the process of awarding growers' licenses will be essential to promoting and maintaining public confidence in the State of Ohio's regulatory oversight of the industry," Ford said.

It is nearly impossible to know how many people applied statewide and where they plan to grow medical marijuana without those applications.

Ohio passed its medical pot law last year. Ohio-grown marijuana for eligible medical conditions should be available by September 2018. Until then, patients can seek marijuana from other states where the drug is legal.

Court seeks comment on releasing grand jury transcripts in police shootings

From The Columbus Dispatch

A proposed change in Ohio court rules to allow now-secret grand jury transcripts to be released to the public — targeted at cases in which police officers are not indicted in fatal shootings of suspects — has reached a new phase.

The Ohio Supreme Court listed the change among proposed amendments to court rules it released for public comment on (Oct. 23).

A task force appointed by Chief Justice Maureen O'Connor recommended in 2016 that grand jury testimony and evidence be released in limited cases to help foster public confidence in grand jury indictment decisions.

The task force was formed to find ways to increase public confidence in the grand jury system following controversial fatal shootings of blacks in which white officers were not charged with crimes, such as the in the death of 12-year-old Tamir Rice in Cleveland in 2014.

The proposal would allow any member of the public to petition a court to release the records of grand jury proceedings to show why it declined to issue an indictment in a given case.

Champaign County district to pay \$15K after WHIO barred from recording

From Springfield News Sun

A Champaign County school district has agreed to settle a lawsuit brought by Cox Media Group Ohio after WHIO-TV was prevented from recording video of a public meeting in October 2016.

The Triad Local Schools board of education approved the settlement agreement that will require the district to pay \$15,000 to Cox, which also operates the Springfield News-Sun and Dayton Daily News.

Cox's complaint alleged violations of Ohio's Open Meetings Act for failure to allow WHIO to record a public school board meeting on Oct. 24, 2016. WHIO planned to cover the school board meeting after 11-year-old Bethany Thompson had killed herself. Her parents alleged she killed herself because of constant bullying at the district's middle school.

Community members told Cox Media Group that they planned to voice concerns about bullying at the school and the media outlet wanted to document the meeting.

When the news crew arrived at the board meeting, a reporter and videographer were told cameras wouldn't be allowed, despite it being a public meeting. The crew was informed by Triad Superintendent Chris Piper that media had to contact the school before the meeting to request permission to bring cameras into the board meeting.

Cox Media Group alleged that was a violation of the Open Meetings Act, a law designed to ensure transparency in government and public entities.

"We are thrilled with the outcome of this case," said attorney Erin Rhinehart, who represented Cox. "Our client is committed to ensuring government transparency, and we are hopeful that our efforts here will remind others of the importance of complying with Ohio's open meetings laws."

WHIO News Director David Bennallack said WHIO will continue to report the news and fight for public transparency.

Records regarding Mandel commercials hard to come by

From The Columbus Dispatch

Ohio Treasurer Josh Mandel says he's a major proponent of government transparency, pointing often to the online Ohio Checkbook he created. But he's also claiming there was no written communication among him and his senior staff about the cost of and payments for a \$2 million series of television ads that ran last year at taxpayer expense.

That's the opposite of transparency, several observers said.

"It's entirely not plausible that a state agency would find a way to spend \$2 million on advertising without internal discussion about it or written communication about it," said David R. Marburger, a Cleveland attorney who has written a book about Ohio's open-records law. "It's even more implausible that this would be designed to be in increments small enough to avoid the Board of Control with no written communication."

Mandel announced in June of 2016 that his office would spend less than \$800,000 on television advertising for the STABLE program, which allows families to set up tax-free accounts for disabled children.

The treasurer's office ended up running about \$2 million worth of commercials, which featured Mandel and Ohio State Football Coach Urban Meyer. And it broke up the buys into chunks of less than \$50,000 apiece, thereby avoiding a requirement to get approval from the Controlling Board. In response, Mandel's fellow Republicans in the legislature passed a law as part of the budget this year to put a stop to the practice.



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Ruling: Public records appeals process does not cover court records

From The Columbus Dispatch

To the chagrin of transparency advocates, a new appeals process to permit Ohioans to pry loose potentially illegally withheld public records does not apply to court records, an Ohio Court of Claims judge ruled.

The decision by Judge Patrick M. McGrath was issued (June 2) in a case filed by The Dispatch seeking to unseal records in the divorce case of state Sen. Kris Jordan and Delaware County Recorder Melissa Jordan.

Michael Brady, a visiting judge in Delaware County Common Pleas Court, unsealed the case in response to The Dispatch's request a day before he was formally served with the newspaper's Court of Claims complaint.

The Dispatch contended that the sealing of the case violated Ohio's public records law and court rules, which say court records are presumed open and only can be sealed with legal justification. The entry sealing the Jordan case contained no such justification.

McGrath dismissed the complaint, ruling that the courts have controlled their own records since mid-2009 and that the law creating the appeals process only permits appeals of public records denials by executive-level agencies.

"This special statutory proceeding does not confer authority to hear disputes regarding denial of access to court records," which require the filing of a mandamus action in other courts, he wrote.

The law creating the low-cost, prompt public-records appeals process was authored last year by then-Senate President Keith Faber, R-Lima, now a state representative.

Faber said Monday it "certainly was not our intent" to prevent the appeals mechanism from also handling disputes over court records. "Why would the Court of Claims process not be a good way to appeal (denial of court records)?" he asked.

Faber said he understands the need for separation of powers between the legislative and judicial branches, but noted, "This should apply to all government disputes where it makes sense and certainly if the court is saying the statute doesn't apply, they ought to enact a similar appeals process" for court records.

Crestwood won't release football investigation records

From The Record-Courier

Crestwood school officials blocked the release of records (on Nov. 6) that may shed light on why the Red Devils football team was abruptly suspended just before its Sept. 29 game.

The district formally rejected the Record-Courier's Oct. 12 request for public records pertaining to a now closed internal investigation of the football team, claiming any records are not releasable under federal law. Public records experts interviewed Monday disagree with Crestwood's legal interpretation.

The district did release redacted personnel files for eight football coaches as requested. Those documents did not shed any light on what prompted an eventual 2-game suspension. Nor were there any disciplinary notices, which was part of the request.

In a letter from Treasurer Jill Rowe, the district denied "in its entirety" the release of any additional records.

"Specifically, the request is denied

as it seeks confidential investigative records and the disclosure of information provided by Board employees to whom confidentiality was reasonably promised," Rowe wrote. "... In addition, the request is denied because it seeks personally identifiable information regarding students attending public schools."

Mantua police are currently looking into what happened for a second time after Portage County Prosecutor Victor Viguicci asked for additional information before he decides if criminal charges are warranted. Mantua Police Chief Harry Buchert has not returned calls from the Record-Courier since Viguicci sent the case back to his department last week.

The Record-Courier disagrees with Crestwood's decision, General Manager and Editor Michael Shearer said.

"We believe Crestwood is clearly wrong in its interpretation of the law, nor is it a police agency with confidential investigatory records," he said. "We specifically noted in our request that we did not seek any identifiable student information and understood documents would likely need to be redacted in part."

Attorney David Marburger, an expert in public records law, said Crestwood appears to be improperly relying on a law governing confidential law enforcement records, which allows police agencies to keep information confidential during an ongoing investigation.

Plain Dealer and Advance Ohio are backing out of the Greater Cleveland Partnership over lack of transparency

From Cleveland Scene

(On Oct. 27) on WCPN's weekly Reporters' Roundtable, Cleveland.com editor Chris Quinn announced that the Plain Dealer and Advance Ohio (PD/Cleveland.com parent company) would be renouncing their memberships in the

Greater Cleveland Partnership, the local chamber of commerce.

That decision comes amid local controversy surrounding Cleveland's bid for Amazon's second headquarters, details of which have been kept secret. Though the city of Cleveland, Cuyahoga County and 20 other quasi-public and private organizations were involved in the creation of the bid, no one is sharing specifics. Mayor Frank Jackson told Channel 5 that he would release the bid eventually, but GCP is said to be mandating the tight lid on information.

"We at Advance Ohio and the Cleveland Plain Dealer have been a member of that group for a long time," Quinn said on WCPN. "We're getting out. We're not going to be a part of it anymore. We are all about transparency, and don't want to be part of something that's not."

Responding to a follow-up inquiry, Quinn told Scene that Advance and the PD had been weighing for some time whether or not they would renew their membership in February. In fact, they were "leaning toward" not renewing.

"We have been questioning the value our organization receives in return for the substantial membership dues we pay, for one," Quinn wrote in an email. "But GCP's old-fashioned role in keeping the Amazon proposal secret made the decision more urgent."

Public agency refuses to release transportation data related to Amazon bid

From The Plain Dealer

The Northeast Ohio Areawide Coordinating Agency, a publicly-funded entity obligated to follow Ohio's open records laws, has denied a request for transportation data it supplied to Team NEO as part of the region's bid to attract Amazon's second headquarters.

Grace Gallucci, NOACA's executive director, said she has been asked not to release the records and she directed cleveland.com to Dix & Eaton Public Relations, which helped organize the Amazon bid and is responding to media inquiries. Cleveland.com did not request the Amazon bid but asked NOACA, which helps governments with transportation and environmental planning, for the underlying transportation information it

gathered for the bid.

"We can't speak for NOACA on their data so that's a request they have to answer," Dix & Eaton CEO Chas Withers said, noting that some information related to the bid would be released today to The Plain Dealer.

Gallucci said in an email after the story was first published online that the agency would review the request and respond according to the time frame prescribed by law.

"The referral to Dix and Eaton was intended to be helpful to you, as well as be consistent with my team's directive on point person for media coordination," Gallucci said. "As is NOACA's procedure, your request is being reviewed internally and we will get back to you as soon as possible, but definitely within the legal timeframe."

Cleveland Mayor Frank Jackson and Cuyahoga County Executive Armond Budish have refused to release the bid, claiming that region's bid is proprietary, though they have been unable to show how underlying information is protected information.

A spokeswoman for Budish said: "The county executive has given no directives to other agencies regarding what they can or cannot release."

NOACA's second vice president is Valarie McCall, Cleveland's chief of government and international affairs. She worked on the bid and has been a proponent of blocking the release of the Amazon bid as a whole.

McCall said in an email after the story posted that she was unaware of cleveland.com's request to NOACA and that she has not instructed the agency to sit on the information.

Man sues police over fake Facebook page

From The Columbus Dispatch

A man acquitted of a felony for creating a fake Facebook page that parodied the Parma police department sued the city and three officers (Oct. 10), saying they violated his right to free speech.

Anthony Novak created a Facebook page in March 2016 that appeared similar to the page of Parma's police department, and he posted items suggesting police were performing free abortions for teenagers.

The page also suggested it would be illegal to help the homeless for three months, and it had a recruitment post "strongly encouraging minorities to not apply."

Parma police announced an investigation into the page the day it was created. Novak, 28, took the page down less than 12 hours after putting it up. Officers subpoenaed Facebook for Novak's identity.

A SWAT team raided his apartment and confiscated his laptops, cellphones, tablets and gaming consoles. Novak was charged with disrupting public services, a fourth-degree felony that carries a sentence of up to 18 months in prison.

"This is one of the most extraordinary examples of government retaliation I have ever seen," said Subodh Chandra, Novak's attorney.

During his trial, officers said they were worried that protesters would show up at the police station. A jury acquitted Novak in August 2016.

The lawsuit seeks financial compensation and asks for the return of Novak's electronic devices.

Residents claim First Amendment violations on trustee's Facebook page

From The Dayton Daily News

A township trustee in Warren County has unblocked Facebook critics since the filing of a federal lawsuit claiming he prevented residents from commenting on his trustee site on the social network.

The lawsuit is filed on behalf of five Hamilton Township residents who claim David Wallace Jr. violated the First Amendment when he blocked them from commenting on a Facebook page he uses for township business.

The lawsuit is related to his management of a Facebook site where he interacts with residents about village issues, but which also features (his own) re-election materials. He also has another web page devoted to his campaign.

"Recently, a federal court in Virginia found that a local politician had violated the First Amendment when she temporarily banned a constituent from commenting on her Facebook page. This case raises substantially similar issues," Joshua Engel, the lawyer who filed the lawsuit, said in comments posted on his law firm's website..



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Painesville sued over alleged 'secret' immigration task force meetings

From The News Herald

Two Lake County residents are claiming Painesville city officials violated Ohio Sunshine Laws by holding secret community task force meetings about a controversial immigration policy.

Kirtland resident Arzella Melnyk and James Weber of Painesville filed a complaint Aug. 29 in Lake County Common Pleas Court accusing City Manager Monica Irelan and City Council President Paul Hach of illegally closing task force meetings to the public.

On June 19, Irelan announced at council's regular meeting that a task force had been formed to review the recently enacted Painesville Police Policy 413.

Lake County Jail officials used to report suspects of being undocumented to U.S. Immigrations and Customs Enforcement, but then delegated that responsibility to individual police departments.

Painesville police then created a policy that details guidelines for officers after they arrest suspects for violent crimes, drug offenses or gang activity.

After the department's new policy was publicly criticized as being insensitive and hostile, a task force was created that included residents, representatives of the city and police officers, plus religious, immigration and Latino organization leaders.

According to the lawsuit filed by attorney Matthew J. D. Lynch:

- The task force held a secret meeting June 29 at Harvey High School in Painesville.
- On July 5, Weber was told by email that the task force meetings "are not

open to the public."

- On July 31, the task force held a secret meeting at St. Mary's Parish.
- Any actions taken by the task force at its meetings is in violation of law under the Ohio Revised Code.

Melnyk and Weber are seeking an injunction to stop the task force from continuing "to meet in secret."

The plaintiffs are also asking for unspecified monetary damages plus attorney fees and expenses.

Ohio State pays legal fees to settle public records case

From The Columbus Dispatch

Ohio State University has agreed to pay up to \$6,000 in legal fees in exchange for the dismissal of a lawsuit alleging it illegally withheld records on an energy-privatization deal.

Bruce Weide, a retired computer science professor, sued the university in the Ohio Supreme Court on April 4, claiming it failed to promptly release records associated with a \$1.1 billion contract with a French energy company.

OSU failed to promptly release its request soliciting proposals for the energy management contract, declaring it a "trade secret," and also declined to immediately make public the agreement spelling out the terms of the deal with Ohio State Energy Partners, the lawsuit alleged.

Weide said it constituted a scheme to keep the records from the public until after the university's trustees approved the agreement involving Paris-based ENGIE and the Axiom Infrastructure investment firm.

The Ohio Supreme Court referred the case to mediation. Fred Gittes, a Columbus lawyer who represents Weide, said he agreed to dismiss the lawsuit in a settlement requiring Ohio State to pay his client's legal fees of up to \$6,000.

Gittes said the matter became moot because Ohio State finally released the records once the deal was approved by

trustees.

"They effectively achieved their goal of denying meaningful public access to the records until after the board voted," Gittes said.

"Ohio State complied with public records law and acknowledged no liability in the resolution of this matter," Ohio State spokesman Ben Johnson said. "The process of arriving at this historic partnership -- which will benefit the environment, our students, our faculty, our community, and the university for decades to come -- lasted for years and was highly collaborative."

Ohio commentators sue over online harassment ban

From The Associated Press

A group of liberal and conservative online political commentators in Ohio has filed a constitutional challenge to the state's recently enacted law against internet harassment.

A federal lawsuit filed (May 16) in U.S. District Court in Cleveland alleges a prohibition against knowingly posting text or audio statements or images on a website "for the purpose of abusing... or harassing another person" violates the commentators' constitutional rights to free speech and expression.

The plaintiffs in the suit are the liberal blog Plunderbund; the Portage County Tea Party, represented by well-known GOP detractor Tom Zawistowski; and John Spinelli, a freelance political reporter.

All contend they or their organizations "routinely engage" in protected speech that "may be considered provocative" and the law now subjects them to "a credible risk of prosecution."

At issue is a prohibition included in a bill expanding crimes of menacing and telecommunications harassment that unanimously cleared both chambers of Ohio's Legislature last session. Republican Gov. John Kasich signed it, and it became law Aug. 16.



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When universities conduct president searches in the dark, the results can be a disaster

From The Courier-Journal

When Robert Sternberg was hired in 2013 as University of Wyoming’s 24th president, the state Senate president called him a “rock star.”

But he was selected without faculty or student input and was forced to resign 137 days later.

Sternberg, who had driven away deans and thrown the school into chaos, admitted the 131-year-old university in Laramie “might not be the best fit for me.” Wyoming’s board of trustees also acknowledged it had made a mistake and voted unanimously to conduct its next presidential search in the open.

After the University of Louisville’s board announced it will try to find a replacement for ousted President James Ramsey through a search in which the names of finalists will be kept secret, the Courier-Journal examined other confidential quests. It found that while some have produced successful presidents, others were disastrous.

- At the University of Tulsa, for example, after a confidential search led by the same headhunter the University of Louisville hired, President Geoffrey Orsak was fired in 74 days.
- At Maryland’s public honors university, St. Mary’s College, President Joseph Urgo resigned two years after he was hired,

as enrollment plummeted so drastically it put the school’s future in jeopardy.

- At the University of New Mexico, Washington banker John Elac – a friend of the school’s search consultant – quit on his second visit to campus, before his contract was even signed, when an enraged faculty challenged his credentials.

University search consultants, including Bill Funk, who the University of Louisville is paying up to \$170,000 to find Ramsey’s successor, say private searches are essential to recruit respected sitting university presidents because none will throw their hat in the ring if they know they will be outed.

Florida-based headhunter Jan Greenwood said presidents have been fired for their disloyalty when their names turned up in another search, and donors have withdrawn multimillion-dollar pledges.

But some scholars who have studied presidential searches say it is impossible to determine if a candidate will be a good fit if finalists are not introduced to the campus community.

“Confidential searches are antithetical to the concept of a public university,” said James Finkelstein, professor of public policy at George Mason University. “Faculty and students should say it is unacceptable for the community to be presented with a single candidate.”

Search engine makes finding public records less painful

From Poynter

Bill Hanks was trying to find a way to sweep journalists’ inboxes of press release spam when he stumbled upon a bigger issue.

On a visit to a Seattle newsroom, he watched a reporter spend 45 minutes crawling through U.S. Securities and Exchange Commission filings, copying queries into a notepad on his desktop and into the SEC’s data retrieval system. Afterwards, the reporter left for the patent office to pore over applications, hoping to stumble upon a nugget that could grow into a story.

Hanks, who was previously a director at Microsoft’s Bing, perhaps unsurprisingly saw this as a problem that could be solved with better search tools. So he teamed up with David Kellum, another search veteran, and founded Sqoop.

“The government honors its duty to disclose, they just don’t make it easy to find this stuff sometime,” said Hanks, who founded Sqoop on the principle that it shouldn’t take much time or effort to find and view public records.

The search engine, which is free for journalists, compiles records from several different sources.

Reporters can do a quick search for person, place or topic and refine results based on data type or form. Other parts of the search engine can also be fine-tuned to reduce noise. For example, SEC filings can be refined based on industry or geographic location, and courts can be drilled down by type of court or to individual courts themselves.

Sqoop’s website is <https://sqoop.com>.

Fourth Amendment protects against warrantless seizure of cellphone location records, amicus brief argues

From The Reporters Committee for Freedom of the Press

On August 14) the Reporters Committee for Freedom of the Press and a coalition of 19 other media organizations submitted a friend-of-the-court brief to the Supreme Court of the United States in the case of Carpenter v. United States. The coalition brief urges the Supreme Court to reverse a decision by the U.S. Court of Appeals for the Sixth Circuit and require the government to abide by the Fourth Amendment and obtain a warrant to access cellphone location records.

“The government should not be able to obtain cellphone location records without first getting a warrant,” said Bruce Brown, executive director of the Reporters Committee for Freedom of the Press. “The current ruling makes it too easy for the government to track a person’s every move through their cellphone.”



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 News Media 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.

Annual membership to OCOG entitles a group or individual the use of the FOI legal hotline, and subscription to the newsletter.

OCOG is funded by contributions from The Ohio News Media 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.

OCOG needs your support!

OCOG’s most public – and expensive – activity is supporting legal cases involving open government issues in Ohio. The Coalition receives multiple requests each year to provide “amicus” (friend of the court) briefs in pending cases. OCOG’s experienced attorneys have helped plaintiffs achieve major wins at the Ohio Supreme Court. Just in the past two years, cases OCOG supported resulted in the following rulings:

- Thanks to the efforts of courageous student journalists, police records kept by private college police forces utilizing sworn and commissioned officers are now subject to Ohio’s open records law – meaning that these forces no longer can secretly arrest and detain people or investigate thefts, assaults and other campus incidents that should be open to scrutiny. (*Schiffbauer v. Otterbein University*)
- Public bodies cannot use email to discuss and deliberate in an effort to exclude other board members and end-run requirements of Ohio’s open meetings law. OCOG supported a school board member who didn’t like what he saw. (*White v. Olentangy School District*)

- Police can no longer indefinitely withhold entire files of closed cases just because someone could file a future action, thus providing access to those who may be able to prove they were wrongfully convicted. OCOG’s support was critical in a multi-year battle to provide an avenue for the Innocence Project at the University of Cincinnati to evaluate these claims. (*Caster v. City of Columbus*)

The cost of such briefs is high – ranging from a minimum of \$5,000 in most cases to \$10,000 or considerably more with additional appeals adding more costs. Given OCOG’s resources, only one or two cases a year can be considered.

These issues never go away. There is an urgent need for an organization such as OCOG to help fight these battles. The Coalition particularly seeks support to bolster the Hal Douthit Fund, named after OCOG’s founding board chairman, and maintained to cover the expenses for legal work.

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

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.