Ohio Coalition for Open Government

OPEN GOVERNMENT REPORT

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Supreme Court issues several major decisions protecting public's right to know

By Jack Greiner

Just before 2018 ended, the Ohio Supreme Court handed down three decisions that will immediately enhance the public's right to know what its state government is up to. In all three cases, Justice Sharon Kennedy wrote the majority opinion. Considering these opinions, it seems Justice Kennedy has decided to take a leading role in the area of transparency.

In State ex rel Rogers v. Department of Rehabilitation and Correction, Justice Kennedy noted:

"The availability of attorney fees is a check on a public office's ability to inappropriately deny a public-records request and choose instead protracted litigation."

The Rogers case also demonstrates that questionable exemptions won't fly. Rogers

(see **Ohio Supreme Court,** *page 4)*

House Bill 139 opens Ohio's historical records to the public

Before leaving office Gov. John Kasich signed into law House Bill 139, which opened a number of historical records to the public.

The bill, which was introduced by Rep. Rick Perales, R-Beavercreek, was backed by archivists, historians and genealogists across Ohio who had been working for several years to open public records that had been kept secret in perpetuity.

Robin Heise, manager of the Greene County Archives in Xenia, joins Rep. Rick Perales, right, in presenting Ohio News Media Association Executive Director Dennis Hetzel with a proclamation thanking the association for support of House Bill 139. The ONMA joined with historical groups to help push for the bill's passage.

Under the bill, the public now can view county home registers, children's home registers, dockets, veterans' relief records, certain adoption records, lunacy records, and many other categories of permanently retained records after 75 years. Exceptions include records protected by attorney-client privilege and critical infrastructure records.

Gov. John Kasich signed the bill into law after it passed both the House and Senate unanimously on the last day of the legislative session.

OGOC joins brief arguing for disclosure of opioid data in public health lawsuit

Editor's note: *The Ohio Coalition for Open Government has joined this amicus brief arguing that the opioid data should be disclosed.*

From the RCFP

The Reporters Committee for Freedom of the Press and a coalition of 36 media organizations are supporting HD Media and The Washington Post's fight for the release of key data related to the ongoing opioid crisis.

Approximately 1,300 mostly governmental bodies have sued pharmaceutical companies for their involvement in the opioid epidemic — the deadliest drug crisis in U.S. history. This case could result in billions of dollars in payouts and could impact the lives of millions of Americans. As part of the case, the Drug Enforcement Administration produced information in discovery about the number of opiate doses sold in each county by pharmaceutical companies from 2006-2014. HD Media and The Washington Post have sought release of this data, which was provided to the state and local government plaintiffs in the case, under state public records laws. However, a district court order has barred its release, citing a protective order in the litigation.

(see **amicus brief** *page 3)*

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Open government fared pretty well in 132nd General Assembly

By Dennis Hetzel, OCOG President

The end of the 132nd Ohio General Assembly brought mainly good news for open government advocates in the Buckeye State. Some good bills passed, some bills of concern were made better through amendments and nothing really bad happened to diminish access and transparency.

Bills that didn't become law will have to start over in 2019. The Ohio House is off to a good start with the announcement by newly elected speaker Larry Householder that he wants House committee hearings to be televised, just as full sessions of the Ohio House and the House Finance Committee are streamed online now.

Hetzel

Bills that became law

Body cameras: Probably no bill will impact citizens concerned about government accountability and transparency more than House Bill 425. We identified the likelihood of legislation affecting public records and police-worn body cameras more than two years ago. Other states had passed laws with severe restrictions, including release only at the discretion of the local sheriff or chief.

Fortunately, the new Ohio law retains the presumption of openness that must attach to public records. New restrictions deal with obvious privacy issues such as dead bodies, acts of severe violence and interiors of private residences. Other portions of such video can be released. Video that captures uses of force by police officers will be open. There's also an appeals process for the first time in Ohio that allows a petition to court that public interest outweighs privacy concerns, which could be important in exceptional circumstances. The low-cost, expedited appeals process for record denials in the Ohio Court of Claim also applies. Dash cameras were included in the provisions of the bill.

Mug-shot profiteering: Under HB 6, you can't charge people for removal of a criminal record. This bill was aimed at websites that profiteer by charging people who have been arrested for removal of their booking photographs. Because the bill wisely treated this as an unfair trade practice instead of a restriction on public records, journalists and, for that matter, everyday citizens still have access to these important records.

School-bus accidents: House Bill 8 blocks the release of identifying information of children in school-bus accidents. When the bill got to the Ohio Senate, the ONMA negotiated an exception that allows journalists to view this information.

Loophole closed: The Ohio Supreme Court had blocked winners in public records cases from seeking fees because of an outmoded provision that said fees only could be sought if the request for records was made in person or by certified mail. Digital requests now apply. This is a nice win for any citizen involved in open records litigation.

Records can't be secret forever: It looked like HB 139 was going to be caught in the end-of-December logjam. I'm proud that ONMA was able to help a coalition of historians, archivists, librarians, adoptees and others end the practice of some records being kept secret in perpetuity – for example, county hospital records. Other than a few, logical exceptions, no records will be secret in Ohio for more than 75 years now. Legislators also removed a bad provision that would have added a new loophole to the public records law.

Graphic photos: The ONMA strongly opposed HB 451, which exempts graphic depictions of crime victims from the public records law, saying that the

(continued above, page 3)

continued from page 2

bill was unneeded and existing court rulings and privacy laws covered the issue. A clarifying amendment ensured this new exemption didn't apply to text descriptions.

The state budget: Massive budget bills always contain efforts to close records, whether those records involve spending or not. (That's just the way it is.) The 2018-19 state budget was no exception. Fortunately, a number of measures that would have created new exemptions didn't make it into the final budget. For example, the Ohio Lottery Commission sought to delay or block access to preliminary audit documents.

What didn't pass that mattered most to us

Ohio Checkbook: HB 40 would have required future state treasurers to continue the online website to track government spending, www.ohiocheckbook.com, started by outgoing treasurer Josh Mandel. Keith Faber, the new treasurer, plans to continue the site.

Data Ohio: For years, Rep. Mike Duffey, who is term-limited out of the Legislature now, tried to bring Ohio government into the 21st Century with a comprehensive effort to reform how the state handles and presents data. Many aspects of this bill would've helped citizen groups and journalists covering Ohio government do their jobs faster and better.

Campaign finance: Now that he's secretary of state, hopefully former Sen. Frank LaRose will keep pushing his efforts to make government more transparent. His Senate Bill 44 would have allowed local campaign committees to file finance statements online.

Sealing and expunging: Legislatures around the country, including Ohio, are considering many well-intentioned "second-chance" bills to help those accused or convicted of crimes to get on with their lives. The problem is that this often involves sealing or, worse, expungement of records. Expungement means all evidence is destroyed, and we've argued – generally with success -- that this should be extremely rare. Otherwise, government also is destroying the evidence of what it did and, sometimes, how it screwed up. Expect more of these bills in the future.

There were many other bills with open government implications that were considered that we don't have room to list. As always, we welcome your feedback and questions.

Some suggestions for the 133rd General Assembly

We think there should be improvements in both Ohio's open records and open meetings laws.

The ONMA is proposing three reforms to the open meetings law: Make open meetings legal disputes part of the Court of Claims appeals process. Make "information-gathering" and "fact-finding" sessions open to the public. Require some type of record, video or written, of executive session deliberations.

The definition of "public record" also is outmoded. Note that something can't be an open record if it isn't a public record. Court decisions have narrowed the definition further, so ideas for improvement need discussion.

I'm sure the next two years will have surprises. Please stay alert. Talk to your legislators. Let us know how we can help, and contact us anytime you hear something we might need to know

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***Dennis Hetzel** is executive director of the Ohio News Media Association and president of OCOG. Hetzel is retiring from both organizations effective April 2019, with Monica Nieporte taking over the positions. For more about Nieporte, see the story on page 4.*

Hetzel and his wife will move to their home in North Carolina, where he plans to stay active in the media industry and government relations work. Hetzel joined the ONMA in 2010 from Enquirer Media in Cincinnati following a career as a reporter, editor, general manager and publisher at newspapers in several states. Hetzel also has taught journalism at Temple and Penn State universities and published two political thriller novels.

OGOC joins brief arguing for disclosure of opioid data

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The media coalition is urging the U.S. Court of Appeals for the Sixth Circuit to reverse the district court's ruling in Ohio that would prevent the data's release.

Previously, a West Virginia court ordered the release of much of the DEA's information on the number of opiate doses sold in that state. As a result, it became clear this type of data was important for the public to have access to, the coalition argued in a friend-of-the-court brief filed November 13, 2018. The data "illuminates the depth and magnitude of the prescription drug crisis; indeed, if the West Virginia data is any indication, this data could show a dramatic increase in opioid prescriptions [from 2006-2014]," the coalition writes.

The information also could shed light on the government's failure to adequately address the opioid epidemic, the coalition explains, and its release would give the public the necessary information to hold those in elected offices accountable.

In addition, a lack of access to the data might result in less confidence in judicial processes. In the brief, the coalition explains that the Supreme Court has recognized secrecy breeds distrust of the judicial system and its ability to adjudicate matters fairly. It also "insulates the participants, mask[s] impropriety, obscur[es] incompetence and conceal[s] corruption."

The Sixth Circuit and other courts have repeatedly recognized that public interest cannot be discounted when protective orders are issued, especially in matters involving the government and public health. Past legal decisions have also held that court documents produced to parties under protective orders can't be automatically sealed when they are filed in court — once a document is filed with a court, it cannot be sealed unless the common law and First Amendment presumptions of access are overcome.

"In short, a protective order does not justify sealing 'from public view materials that the parties have chosen to place in the court record,'" the coalition notes.

To read the brief, go to https://www.rcfp.org/briefs-comments/re-natl-opiate-prescrip-litig/

Nieporte named new OCOG president

Monica Nieporte, the former president and publisher of the APG Ohio media group in Athens, will become the new president of the Ohio Coalition for Open Government in April 2019. Nieporte is also the incoming president and executive director of the Ohio News Media Association.

Nieporte will assume these positions following the retirement of Dennis Hetzel, the current president of OCOG and executive director of ONMA.

"I'm honored to be selected to follow in Dennis' footsteps," Nieporte said. "Dennis has been a great leader of both the association and OCOG. Thanks to Dennis's hard work, OCOG has become a powerful voice for open government issue in our state. I aim to ensure that voice continues to be heard in the years to come."

Nieporte is a Canton native and graduate of the Scripps School of Journalism at Ohio University. She held her position with APG Ohio since 2014 when the parent company purchased American Consolidated Media's media properties in Ohio. She had been a regional vice president of ACM since 2008 and with previous positions as a publisher in Logan, editor and reporter in Athens and as city editor at the Zanesville Times Recorder.

Nieporte

Open Government Editorials and Commentary

Kent State's presidential search needs to be open

Commentary by Henry Palattella, KentWired.com

When Kent State president Beverly Warren announced in a university-wide email on Oct. 23 that she will step down as president in July, the Kent community was stunned.

She is a regular sight around campus, whether it's talking to students in the dining halls, at Risman Plaza on a warm day, or courtside at a basketball game, her million-dollar smile illuminating the M.A.C. Center. It's not a stretch to say Warren served as the lifeblood of the university community during her five years as its president.

But the process that led to Warren becoming president in 2014 was anything but illuminating. Warren was picked as Kent State's 12th president after a secret search by the university. Kent State spent nearly $250,000 of public money on the search — many details of which weren't, and still aren't, publicly available.

To find Warren, 17 members of a search committee worked with Storbeck/Pimentel & Associates, a private search firm based out of Pennsylvania, to try to find candidates who fit what the university was looking for in its next president. After the committee finished the search, it never publicly released the names of finalists for the job.

That can't happen again.

The proceedings of the 2014 search read like a journalistic horror story. Kent State didn't include any candidate names on receipts or invoice copies. Repeated public records requests of the university and Storbeck/Pimentel & Associates were ignored for months. When asked about the records, the university grew increasingly distant and silent; it was a silence that spoke volumes.

One member of the search committee even told the Akron Beacon Journal his notes were shredded by the university. That was a gross misuse of power, and the thought of this abuse of public trust happening again sends chills down my spine.

Not only are these actions a potential violation of Ohio's Sunshine Laws, but it also is antithetical to our idea of American democracy. My journalism classes taught me about the power of public records, and how they not only serve as a vehicle to prevent corruption, but also allow for us to live in an informed society — two values Kent State chose to ignore in their last search. Leaders in America aren't elected by a group of 17 people who meet behind closed doors. They're chosen by us, the people.

Kent State is a place filled with a group of incredibly diverse, varied and courageous people, and they deserve a chance to develop an organic opinion of the finalists when they're exactly that — finalists.

Owen Lovejoy, one of the search committee members in 2014, told the Daily Kent Stater he felt "more than 50 percent of the candidates would not have applied for the job, maybe 75, had the search not been secret."

That shouldn't matter. We know that Lovejoy munched on $7 pistachios from the hotel bar during the search, but not the names of the candidates who were interviewed at the hotel. Kent State deserves a chance to openly and publicly question and research the candidates, and the candidates who apply need to understand and embrace that reality. If they don't, they're unfit for the job.

This presidential search is arguably the most important one in Kent State's history. Whoever steps into Warren's shoes will be in charge for a majority (if not all) of Kent State's 10-year, $1 billion Master Plan.

This, Kent State, is why I implore you to make this presidential search public. I've seen the university undergo tremendous change during my nearly four years here, and I know there's more coming in the future. The public deserves a chance to question potential presidents about that change and their vision for Kent State. They also deserve to judge for themselves whether they think the candidates will foster that growth, or look to quash it.

And as a journalist, I ask you to think about the example you're setting. Public records often form the basis of what we do; they help us to inform the public and hold people and organizations accountable. Without free and unfettered

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Open Government Editorials and Commentary

Jack Greiner on Ohio Supreme Court issuing several major decisions protecting public's right to know

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had requested security-camera video footage related to a use-of-force incident at Ohio's Marion Correctional Institution. The Ohio Department of Rehabilitation and Correction ("ODRC") denied the request relying on statutory exemptions for "infrastructure records" and "security records." The Court ruled that both exemptions lacked merit. The footage, shot from a mounted camera in plain view did not disclose any critical systems of the prison, and at most displayed a "simple floor plan." The Revised Code expressly provides that a simple floor plan is not a "critical system."

Security records, per the Revised Code include "portions of records containing specific and unique vulnerability assessments or specific and unique response plans either of which is intended to prevent or mitigate acts of terrorism, and communication codes or deployment plans of law enforcement or emergency response personnel." The mounted camera disclosed nothing of the sort.

In short, not only did the Court reject ODRC's position, it concluded that no "'well-informed public office ... reasonably would believe' that the failure to produce the security-camera video complied with the Public Records Act." And for that reason, the Court awarded Rogers his attorney fees.

Kent State University also was ordered to pay attorney fees in two separate cases brought by Lauren Kesterson. In State ex rel. Kesterson v. Kent State University, ("Kesterson I") Ms. Kesterson made a records request on February 2, 2016 that included a request for records regarding training or information provided to the KSU varsity softball team regarding Title IX, gender equity and several other related topics. KSU initially responded by producing approximately 750 pages of records by February 25. But as it turned out, KSU had not provided all responsive records, and did not do so until November of 2016, after Kesterson had filed her mandamus action. Even though the Court found that KSU had ultimately provided all responsive records, and dismissed the request for a writ of mandamus as moot, it awarded attorney fees, finding that KSU's 9 month delay violated R.C. 149.43(B), which requires prompt production.

Kesterson's other suit ("Kesterson II") presented similar facts. On April 13, 2016, Ms. Kesterson requested 21 items concerning KSU's Title IX violations and related matters. KSU produced records in June, but asserted a number of exemptions, including that the requests were "overly broad." While continuing to assert its objections, KSU produced additional records through December 2016. Again, this delay violated the statutory duty to produce records promptly, resulting in a fee award.

Separate from the attorney fee issue, the Kesterson II case went a long way toward clarifying (and limiting) the extent of the "overly broad" objection. In a perfect world, every public record request would seek a discreet, immediately identifiable record. But in real life, not every record lends itself to a precise identification.

Increasingly, public officials communicate with one another, about public business, via e-mail and text message. In most cases, however, the requesting party doesn't know the precise date when the communication was made, nor every recipient, nor the precise description set out in the subject line. Accordingly, requesters make a common sense request for communications between or among a designated set of officials, during a limited time frame, concerning a designated topic. And even though a simple computer search would disclose the requested record, public offices in Ohio have repeatedly claimed that such a search is "overly broad."

Greiner

In Kesterson II, the Supreme Court put an end to this practice, noting:

"While Kesterson did cast a wide net for 'communications,' she limited each request temporally, by subject matter, and in all but one instance, by the specific employees concerned."

In State ex rel. Athens Cty. Property Owners Assn., Inc. v. Athens, the court noted: "[A] person does not come—like a serf—hat in hand, seeking permission of the lord to have access to public records. Access to public records is a matter of right." The recent Supreme Court decisions have given meaning to this sentiment. And it is good news for citizens throughout Ohio.

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Kent State's presidential search needs to be open

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access to them, the very freedoms we as journalists stand on will crumble.

That's why I implore you, Kent State, to make this presidential search public. After the last search concluded, a group of JMC faculty placed a full-page ad in The Stater with the words "We're embarrassed" across the top in large type; it's taped to the front door of my office and I see it every time I come to work as the editor.

Please. I'm urging you. Don't embarrass us again.

Open Government Editorials and Commentary

Editorial: Will JobsOhio claw back its grant like Brooklyn

Editorial from The Plain Dealer

For the more than 160 workers then employed at the plant, for the city of Brooklyn, Ohio, and for the Cleveland area's storied history of garment-making, the arrival in 2015 of a high-end men's suitmaker to take over the closing operations of Hugo Boss AG in Brooklyn was fortuitous.

Keystone Tailored Manufacturing LLC, formed by the W Diamond Group of the Chicago area, not only stepped up to take on the skilled workforce who had labored long and hard to keep their jobs in Brooklyn, but also pledged to upgrade the facilities as it brought its made-in-America Hart Schaffner Marx suits line and other items to Ohio.

The acquisition was greased by generous grants -- $150,000 from the city of Brooklyn to retain and create jobs and payroll; a $420,000 economic development grant from JobsOhio, also apparently tied to job and payroll goals; and an offered $650,000 Cuyahoga County loan, which a county official told reporter Olivera Perkins the company never completed the paperwork on.

Brooklyn's grant had specific conditions, however: Keystone had to retain 172 jobs and create 20 more jobs by 2019 and another 20 by 2021. And the company had to maintain those jobs for at least 10 years. The company also agreed to maintain the firm's $4.6 million annual payroll, and increase it to $5.7 million by 2021.

With Keystone's Jan. 10 "WARN Notice of Plant Closing" to the Ohio Department of Jobs and Family Services -- informing the state of its intention to close the plant no later than March 11 and lay off all the 140 workers now employed there -- the city of Brooklyn has determined that Keystone will be in default of those terms. The city has also started the process of trying to claw back the full $150,000.

But what of JobsOhio's grant? Three weeks after Keystone's formal WARN letter to the state, JobsOhio still won't say whether it will seek to claw back all or some of the $420,000 grant.

"We do not comment on active company discussions," JobsOhio spokeswoman Renae Scott said via email Wednesday, adding, "however I can confirm we are engaged with Keystone Tailored Manufacturing to discuss next steps."

When asked for terms of the grant, Scott referred our editorial board to a June 2015 summary chart of grants that month, which shows that the $420,000 grant would support Keystone's creation of 20 jobs and added $600,000 annual payroll, the retention of 150 jobs and a fixed investment of $6 million.

It's not clear why the JobsOhio grant's job-retention numbers were so much less than those cited in the city of Brooklyn's jobs grant.

Scott refused to provide the actual terms of JobsOhio's executed agreement with Keystone, saying in a voicemail message that "JobsOhio is not an agency of the state. We're a private nonprofit. As a private nonprofit we are exempt from the Ohio public record laws."

Given that JobsOhio's budget is indirectly underwritten by state liquor monopoly profits that support the bonds that provide JobsOhio with its revenues, it's arguably a quasi public-private entity. It owes Ohioans more transparency.

But yes, in 2013, the Ohio Supreme Court determined that the Ohio legislature specifically exempted JobsOhio from most public records law -- shamefully so. The agency, it appears, isn't required to release more on its incentives, or how it enforces them, than the monthly charts and whatever is mentioned in the public version of its tax returns that a private accounting firm releases.

That's wrong. Ohio citizens deserve to know, at a minimum, how JobsOhio frames job-creation and retention requirements in its grants and how it enforces those requirements.

Kudos to the city of Brooklyn for seeking to enforce terms of its jobs grant to Keystone and claw back its citizens' money. JobsOhio, which provided nearly three times as much money, should do the same -- and if its deal with Keystone doesn't give it the same power to claw back that money, it owes the taxpayers an explanation for why not.

Use of 'delete' apps for texts, emails violates Ohio law

From The Columbus Dispatch

Government officials using emails and text messages to handle public business in Ohio had best avoid apps and software that instantly or automatically delete their digital communications.

Under state law, no public records can be destroyed unless authorized by a public office's records retention schedule that specifies how long records must be kept before they are destroyed.

And, if electronic messages are illegally deleted, the Ohio Supreme Court ruled a decade ago that government officials must pay the costs of attempting to recover them and, if successful, turn them over for inspection.

A public official's use of an app that automatically destroys a digital or electronic public record would violate state law, said Dennis Hetzel, executive director of the Ohio News Media Association.

"It is clear under Ohio law, as it should be, that the nature of the content of the communications, not the device or server used, should determine if it is a public record. That includes emails and text messages. There are many easy, best practices that public officials can and should follow to make sure these records are preserved," said Hetzel, also president of the Ohio Coalition for Open Government.

"Any person who has spent more than 30 seconds in the world of politics knows exactly what will happen if personal devices become exempt from open-records laws. That is what will be used for any and all important communications about government business, and there will be fewer records — and fewer meaningful public meetings — with a resulting loss in transparency and accountability.

"There are plenty of ways already for public officials to have preliminary dialogue and discussion outside the public eye. And that's perfectly appropriate in many situations. So let's not weaponize digital secrecy," Hetzel said.

If a public official uses a personal cellphone for government business, those communications are public record and must be preserved. Those of a personal nature are not public and are protected from release

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Open Government Editorials and Commentary

Blade editorial: Police video is public

Editorial from The Toledo Blade

Ohio lawmakers appropriately have enacted legislation that brings needed clarity to the question of when police body camera and dashboard camera video is a public record.

Such video is definitely a public record, as asserted by House Bill 425.

Body-worn and dash cameras are rapidly becoming ubiquitous in police departments in the nation. The Columbus Police Department recorded nearly 90,000 incidents on body and dash cameras in a typical month. That's a lot of public records.

In November, Toledo police received new body cameras — 311 devices, at a total cost of about $228,000.

Body and dash cameras account for much of the video used in social media.

Their use has contributed dramatically to public accountability in cases of police accused of using excessive force, while also protecting lawful police behavior.

By passing House Bill 425, with zero "no" votes in the House or Senate, Ohio has made itself a leader in establishing that bodycam and dashcam video is a public record.

The law has many exceptions, in addition to those already found in Ohio's Public Records Law.

They include images of children in some cases, death and injury that isn't caused by a law enforcement officer, nude bodies, personal medical information, confidential informants, and other private matter, such as the interiors of businesses and homes that are unrelated to a case against a law enforcement officer.

In Cleveland, a federal monitor overseeing reforms in the Cleveland police department found deficiencies in the department's policies governing the use of body cameras. Cleveland found in 2015 that the use of cameras contributed to a 40-percent reduction in citizen complaints against officers over a nine-month period. The federal monitor recommended a comprehensive policy, which helped spur this law into enactment.

Co-sponsor Rep. Niraj Antani (R., Miamisburg) noted that the bill doesn't require police departments to wear body cams or when to turn them on.

The bill supplies police departments with guidelines for transparency, while protecting citizens' privacy.

It may be that the law will require tweaking, as some of the exceptions may prove excessive, and will result in police spending a lot of time and money editing body camera footage to redact images that can't be shown.

Backers of this legislation included the American Civil Liberties Union of Ohio and the Ohio News Media Association.

Making police camera footage into a public record helps keep public confidence that, if it is being constantly video-recorded, at least it is not kept secret and can be subject to public oversight.

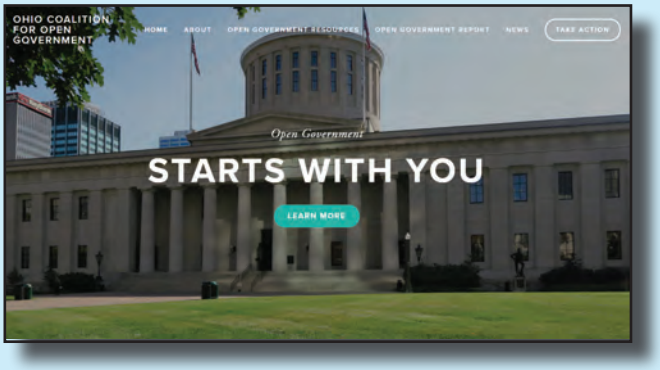
Making camera footage a public record doesn't mean the public is being monitored any less. It does mean that it isn't being done secretly.

Ohio's law helps set a national standard for public accountability and transparency by law enforcement.

Support OCOG by becoming a member today

Benefits include access to the OCOG legal hotline and more

The need for the Ohio Coalition of Open Government (OCOG) has never been greater. The need for your support of OCOG has also never been more urgent. Don't take a chance that open government issues in Ohio could be curtailed or harmed. Join OCOG today!



Along with supporting fights to preserve Ohio's open government, members also receive access to the OCOG legal hotline, which can provide basic assistance on open government and sunshine law issues you may be facing. Other benefits include regularly updated information on pending legislation in the Ohio General Assembly which could impact open government issues in the state.

To join OCOG and receive the OCOG legislative watchlist, see the membership information on the back cover of this issue of the Open Government Report. You can also go to www.ohioopengov.com for more information and to apply. And don't forget that OCOG's website is continually updated with news and information about Ohio open government issues.

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

Ohio's new public records mediation process, which went into effect in 2016, continues to be a success. A large number of open government cases have been favorably settled in the last two years, with the mediation process offering 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, follow the chart below.

To receive this illustration as a free 8.5 x 11 size print copy or PDF, email OCOG's Jason Sanford at jsanford@ohionews.org.

START HERE

Go to www.ohiocourtofclaims.gov/public-records.php

Ohio Coalition for Open Government

Working to strengthen and support open government and public access

Editorial: Public records are public regardless of format

Editorial from The Columbus Dispatch

New apps that allow people to communicate without leaving a pesky digital record may be a godsend for those engaged in top-secret negotiations, confidential advising and ordinary gossip, but we hope all Ohio public officials recognize that they're absolutely inappropriate for government work.

It should be obvious: Ohio's "Sunshine" laws require government business to be done in public, and that means government records, with some exceptions, must be available to the public. A government-business text or email that disappears automatically after a set time would be the same as destroying a public record.

Given the time-honored inclination of some in government to evade public scrutiny, though, it's probably worth emphasizing that vanishing-message apps — sort of a 21st century equivalent of the sizzling reel-to-reel tape recorder on the old "Mission Impossible" — don't belong in public service.

The Associated Press recently tracked legislation in all 50 states and found a number of attempts to shortchange public access:

- In Louisiana and Kentucky, lawmakers tried (and failed, thankfully) to exempt all communications on personal phones from open-records laws — as if who paid for the phone can change whether the communication is public.
- A Virginia legislator introduced a bill to exempt lawmakers' personal social-media records from public disclosure.
- In Missouri, former Gov. Eric Greiten's staff's use of the Confide app, which automatically deletes messages and doesn't allow them to be forwarded or made into screenshots, prompted opposition lawmakers to clarify that personal social-media posts and messages sent through such apps nonetheless are public records if they relate to public business.

It's a fact of modern life that many of us communicate on multiple devices all day and enjoy no clean separation between work and personal time. For government employees, that undoubtedly complicates the definition and preservation of public records, but it doesn't change the principle that any communication by or to government employees involving public business must be retained and made available to the public.

A state representative in Missouri, pushing for the public-records bill, said it best: "We should not be allowed to conduct state business using invisible ink."

Sunshine in Ohio could be brighter

By Randy Ludlow, The Columbus Dispatch

Ohio is neither freezing for lack of governmental sunshine nor basking in the brilliance of total transparency.

Ohioans have it better than residents in many other states saddled with more-restrictive laws and outrageous fees. Yet, obstacles remain in Ohio to full and prompt access to public records. Lawmakers continually search for ways to make more information secret. Local officials are not well-versed in their responsibilities as custodians of the people's records. Court rulings make it harder to pry some records loose while taking others off the table.

It's a mixed bag, but one still edged toward "a pretty decent grade, with some caveats to the legislature and the courts," said Dennis Hetzel, executive director of the Ohio News Media Association and president of the Ohio Coalition for Open Government.

Ohioans can obtain a wide array of documents under public records laws at little or no cost. But getting records depends on the mind-set, cooperation and interpretation of the law by the public officials who sometimes mistakenly think public records are their records.

"I think a lot of the problems are in the execution and interpretation" of Sunshine laws by officials at the state, municipal, county and other levels of government who improperly withhold records, Hetzel said.

"The good news is, the appeals process is equaling or exceeding our expectations. It's a practical, affordable way to clean up some of the more egregious violations."

For Ohioans who once faced huge legal bills to go to court and challenge denial of public records, the Ohio Court of Claims' $25 appeals program has been a revelation since its inception in late 2016, Hetzel said.

From a small-town reporter seeking a complete police incident report to a father seeking school bus video of a bully assaulting his son, the appeals process has levered loose records in a large majority of cases.

About 70 percent of the time in the 102 resolved cases, the filing of a complaint jars loose records or formal mediation persuades the governmental entity to give them up — or a citizen concedes that the denial was proper.

Unsettled cases advance to rulings by a special master, a lawyer with public records expertise, with most of those 37 rulings ordering public officials to turn over records they refused to release. Only three of those rulings have been taken to an appellate court.

"We are gratified by the fact that parties almost always come to us with the willingness to engage in the mediation process. That's why you have well over half of them resolved," said special master Jeffrey Clark.

(Last year), the office of Auditor Dave Yost finds that governmental entities still need to clean up their act when it comes to public records compliance, although the number of citations issued for violations dropped by 22 percent last year. Thirty-two of the 267 entities cited for 321 violations were in Franklin or surrounding counties. Overall, public records problems arose in 5.5 percent of the office's 4,803 financial audits.

Most of the violations involved public officials not attending required records training, entities lacking records policies and failure to make records policies available to employees and the public. Yost released his office's figures Sunday to coincide with Sunshine Week.

"I can understand a bookkeeping error — mistakes happen," Yost said. "But there's no justification for violating the clear law of public records. Message to public officials: 'These are not your records. These are public records, and it is the law. You need to do whatever it takes to remind yourself to comply. And there's training available to help you.'"

After a string of rulings favoring public access to governmental records and meetings, the Ohio Supreme Court delivered a 4-3 decision in December that Hetzel fears could prompt law enforcement agencies to more frequently deny requests for records.

In unsuccessful lawsuits by The Dispatch and The Cincinnati Enquirer seeking the release of autopsy reports in the slaying of eight Rhoden family members in Pike County, the court further entrenched the legal notion that some records with "investigative value" could be withheld by by police. "That can be whatever the police says it is. Everything can have investigative value," Hetzel said..

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OHIO ROUNDUP

Gov. DeWine wants more transparency and a crackdown on pharmacy middlemen, managed-care groups

From The Columbus Dispatch

Frustrated by the ongoing "rip-off" of Ohio taxpayers, Gov. Mike DeWine ordered a crackdown on Medicaid managed care plans and the pharmacy benefit managers they hire to oversee prescription drugs.

DeWine directed Medicaid Director Maureen Corcoran to rebid the managed care contracts and also ordered Medicaid and other state agencies to provide any pertinent data to Attorney General Dave Yost for a potential lawsuit against the pharmacy middlemen, known as PBMs.

"I want to save taxpayer dollars. It's pretty simple. The PBM system we think has ripped us off," DeWine said (February 1).

The governor said he wants to make certain going forward that "we have the right contract and ... we require openness in regard to this whole PBM process. I think the thing the public should find very irritating and very alarming is the secrecy surrounding the PBM process.

"We want to shine a light on that."

DeWine's directives come less than a month into his term as governor and follows an investigation into the costly practices of PBMs he launched last summer while attorney general. His successor, Dave Yost, issued this statement:

"We are actively looking into the PBM business practices and drug pricing. Litigation is never my first choice but justice is. If the state of Ohio claims are supported by evidence we have the tools and will aggressively work to recoup the money that is owed."

Medicaid — the tax-funded health insurance program covering 3 million poor and disabled residents — contracts with five private managed care plans to oversee benefits. The plans have hired two PBMs, CVS Caremark and OptumRX, to decide which medications are covered, negotiate drug prices and rebates with manufacturers, and set reimbursement rates to pharmacists who fill prescriptions.

Separately, new Ohio House Speaker Larry Householder said lawmakers will closely scrutinize both managed care organizations and pharmacy benefit managers.

"I can tell you that I'm always going to be very, very concerned that tax dollars are spent the way they are supposed to be spent. And I can tell that I'm very concerned about MCOs, and I'm very concerned about PBMs," the Glenford Republican told Statehouse reporters.

"I think that's something that we're going to look at hard ... at the way those dollars are allocated back to the systems and make sure they're being done effectively and efficiently. I'm worried that there's money being lost in the system."

A study commissioned by Medicaid last year found PBMs billed taxpayers $223.7 million more for prescription drugs in a year than they reimbursed pharmacies to fill those prescriptions. That 8.8 percent difference, known as the price spread, represents as much as $180 million in excessive profit kept by CVS Caremark and Optum Rx, the study found.

The report said PBM fees should be in the range of 90 cents to $1.90 per prescription, but found CVS Caremark billed the state about $5.60 per script while Optum charged $6.50 — three to six times higher.

Ohio Supreme Court declines to hear ECOT appeal

From The Columbus Dispatch

The Ohio Supreme Court dealt ECOT another loss in August, refusing to hear its argument that the state Board of Education violated Ohio's Open Meetings Act when deciding to order repayments from the now-closed e-school.

In a major decision last week, the high court ruled 4-2 that the Department of Education was permitted under Ohio law to utilize log-in duration data to determine student enrollment that is the basis for state funding. The department had ordered ECOT to repay the state $80 million for students who failed to reach the 920 hours of minimum educational engagement required by the state.

The Electronic Classroom of Tomorrow also had filed a lawsuit arguing that the Board of Education met illegally while deciding whether to formally order the repayment of taxpayer funds. The Franklin County Court of Appeals ruled against the school in February.

The court on (August 15) ruled 4-1 against accepting an appeal of that decision, which now stands. Justice Sharon Kennedy, who also ruled in ECOT's favor last week, dissented. Justices Patrick DeWine and Judith French did not participate.

The legal options for ECOT founder Bill Lager, who made millions operating companies that served ECOT, are largely exhausted. He still has one lawsuit pending in Franklin County Common Pleas court, challenging the Board of Education's administrative process, arguing the board has "taken inconsistent positions as to the nature of its own actions."

West Lafayette launches online checkbook with State of Ohio

From ThisWeek News

Ohio Treasurer Josh Mandel has announced the launch of the Village of West Lafayette's online checkbook on OhioCheckbook.com.

In December 2014, Treasurer Mandel launched OhioCheckbook.com, which sets a new national standard for government transparency and for the first time in Ohio

history puts all state spending information on the internet. OhioCheckbook.com recently earned Ohio the number one government transparency ranking in the country for the third year in a row.

The Village of West Lafayette is the third village in Coshocton County to post their spending on OhioCheckbook.com. The Village of West Lafayette's online checkbook includes over 11,000 individual transactions that represent more than $4 million spent from 2016 to 2018.

"I believe the people of Coshocton County have a right to know how their tax money is being spent, and I applaud local leaders here for partnering with my office to post the finances on OhioCheckbook.com," said Treasurer Mandel. "By posting local government spending online, we are empowering taxpayers across Ohio to hold public officials accountable."

"The Village of West Lafayette is proud to partner with the State Treasurer's Office on the OhioCheckbook.com transparency initiative," said Amy Bourne, Fiscal Officer, Village of West Lafayette. "We hope our citizens will find the information on our checkbook site to be useful and easy to navigate."

For more information or to view your local government website, visit the Local Government option on OhioCheckbook.com or click on WestLafayette.OhioCheckbook.com.

On April 7, 2015 Treasurer Mandel sent a letter to 18,062 local government and school officials representing 3,962 local governments throughout the state calling on them to place their checkbook level data on OhioCheckbook.com and extending an invitation to partner with his office at no cost to local governments. These local governments include cities, counties, townships, schools, library districts and other special districts.

Kent State to pay at least $179K for presidential search, contract details 'trade secrets' claim from search firm

From KentWired.com

Kent State will pay Russell Reynolds Associates, the executive search firm chosen to find the university's next president, a $170,000 retainer for its services, plus a $9,000 administrative fee.

The total cost for the search, laid out in a contract between the two parties, will probably be more, and will equal one-third of the new president's first-year total cash compensation, including their salary and any other "monetary inducements" accepted as part of the hiring negotiations. The $179,000 paid at the beginning of the search to Russell Reynolds will be credited against the total fee.

The university's search for President Beverly Warren in 2013 cost Kent State more than $250,000.

The contract also states Russell Reynolds considers its "processes, procedures, database, portal, candidate and search-related documentation and personal data, and all internal electronic and written correspondence to be confidential, proprietary information, and trade secrets."

Among other terms and conditions, the university agreed to provide the firm an opportunity to deny any public records requests regarding the presidential search. If the firm claims trade secrets, the contract says Russell Reynolds will bear the burden of proving it.

Kent State University journalism faculty call for more transparency in presidential search process

From Cleveland.com

A group of Kent State University journalism faculty are calling for transparency in the search to replace President Beverly Warren, arguing the current process violates the state's open records law.

A statement (on December 17), signed by a group of about 14 faculty from Kent State's school of communication and journalism, asks for the university to release information about the finalists, including relevant documents. When Warren was hired, the university kept the names of the finalists confidential and did not release search documents after she was named president.

Instead, the university had signed a contract which allowed the search firm conducting the process to decide which records were released, according to the Akron Beacon Journal. One member of the search committee told the newspaper that the university shredded his notes.

"Despite spending hundreds of thousands of taxpayer dollars on the search, the first the university community learned of any candidate for the job was when the Board of Trustees announced President Beverly Warren had been hired," faculty wrote in the statement. "Through no fault of her own, Warren started as president under a cloud of suspicion because of the secrecy surrounding her hiring."

Clerk must produce court record, but faces no fine

From Ohio Court News

The Hamilton County Clerk of Courts must respond to one of three records requests a state prison inmate accused the clerk of failing to provide. However, the inmate is not entitled to financial damages from the office for the lack of response to the request, the Ohio Supreme Court ruled (November 28).

In a per curiam opinion, the Supreme Court ruled that Clerk of Courts Aftab Pureval must produce a document from Lionel Harris' aggravated murder trial that occurred around January 1992 or inform Harris that the document does not exist. Harris maintained that Pureval never responded to his public records request and he was entitled to $1,000 in statutory damages.

The Court clarified that while Ohio's public records act, R.C. 149.43, provides for damages when a public official does not respond to a records request, court records are governed by the Rules of Superintendence for the Courts of Ohio, which does not have a financial penalty provision.

Chief Justice Maureen O'Connor and Justices Sharon L. Kennedy, Judith L. French, Patrick F. Fischer, R. Patrick DeWine and Mary DeGenaro joined the majority opinion.

Justice Terrence O'Donnell dissented, stating he would affirm the judgment of the First District Court of Appeals, which dismissed the case.

OHIO ROUNDUP

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Ohio public records law revises code to reflect new mandate on statutory damages

From Muckrock

Before (November 2018), if you won your public records lawsuit in Ohio you would get your records, but not necessarily win any attorney fees or statutory damages. Now, a new revision to the law overrules the outdated provision.

Hidden deep within the old Ohio Revised Code, section 149.43(C)(2) said that only a written request that was "hand delivered or sent via certified mail to inspect or receive copies of any public record" entitled the requester to recover statutory damages in court.

Now, the new Ohio Revised Code, which took effect November 2 2018, includes electronic submissions as part of the requirement to win those damages.

It should be noted that the new revisions only apply to statutory damages, which set a strong precedent for future Ohioans looking to gain compensation for any damages in court. Statutory damages are penalty provisions of the law and are awarded when the court finds that open records laws were violated.

However, attorney fees may still be won in court, but ultimately it's up to the judge to decide that. Per the new code, there are three determinations a judge will account for that may warrant someone to win their attorney fees. Those determinations being, if a records officer failed to respond to a request during the allotted timeline, if a records officer failed to let the requester view the records during the allotted timeline, or if a records officer acted in bad faith.

Ohio Supreme Court accepts jurisdiction in Open Meetings Act case

From Gongwer

The Ohio Supreme Court has agreed to take up a case that could determine if public bodies violate the Open Meetings Act by utilizing secret ballots.

The court has accepted the appeal of Patricia Meade, who alleged the Village of Bratenahl violated the law in 2015 when its council utilized a secret ballot to elect a president pro tempore.

The election required three rounds of voting, and the ballots were reviewed only by the village's law director, according to Ms. Meade, who is the publisher of a community news publication.

In her memorandum in support of jurisdiction, Ms. Meade cites an advisory opinion from the attorney general's office and a 2016 Ohio Supreme Court ruling in which it found a private and prearranged discussion of public business by a majority of a public body through email violates the state's open meeting laws.

"The OMA expressly declares that it is to be liberally construed in openness so as to require public officials to take official action and conduct all deliberations upon official business only in open meetings. In so doing, this court must conclude and declare that secret-ballot voting violates the OMA," she wrote.

Both the trial court and the Eight District Court of Appeals sided with the village in the case.

Ms. Meade said the appellate court ruling "created a standard that does not advance the purposes and goals of the OMA, but directly undermines them."

The Ohio Coalition for Open Government struck a similar tone in its amicus brief supporting jurisdiction in the case.

"If permitted to stand, the decision below will allow local governments to effectively operate in secret, impairing the public's ability to hold their representatives accountable," the group wrote. "Public knowledge of government operations is vital to the legitimacy of local governments in Ohio."

The village, however, said there is no statute or case law that spells out how a vote for president pro tempore should be conducted.

"In fact, (the law) authorizes a legislative authority of a municipal corporation to determine its own rules and in this matter, village council followed its own past practice of using a contemporaneous vote by ballot to elect president pro tempore to a one-year term," the village wrote in opposing jurisdiction in the case.

The village also contends that the secret ballots were not designed to hide public business.

"Contrary to appellant's argument, the purpose of the handwritten ballot was not (to) conceal, but rather, to vote contemporaneously," it wrote. "A contemporaneous vote by handwritten ballot assures comradeship and precludes the potential public pressure resulting from hearing the other councilmember's votes."

Citizen asks state claims court to get records from Goshen Township

From The Times Reporter

A citizen has complained to the Ohio Court of Claims that Goshen Township Fiscal Officer Amanda Spies has not supplied public records she requested more than four months ago.

"I feel that I have given Fiscal Officer Spies ample time to fulfill my public records request," Darissa Lute wrote in her complaint. "She has continued to make excuses and drag her feet on my request.

"This was a simple request, which should have been easily fulfilled in a timely manner. We are now (past) 120 days and I still have not received the records that I requested and paid for."

Lute asked for lists of payments and receipts, budgets, appropriations and monthly reconciliations. She also sought written records of meetings of the three-

member board of township trustees, copies of the fiscal officer's bond, and the hours of accredited training she had taken. The records requested on June 6 are from years 2016, 2017 and 2018.

Lute, fiscal officer for the village of Port Washington, was among the candidates who opposed Spies for the position of Goshen Township fiscal officer in the 2015 election.

Spies contends she has given Lute the records she requested.

Court official finds in favor of The Dispatch over Powell police in Zach Smith records case

From The Dispatch

Powell police provided The Dispatch with records of 2015 domestic-violence complaints against former Ohio State assistant football coach Zach Smith after a special master for the Ohio Court of Claims found (October 23) that the records were improperly withheld.

Police Chief Gary Vest said the department didn't plan to appeal the findings in the 40-page report.

Special master Jeffrey W. Clark found that the police department failed to comply with Ohio public records law in withholding numerous documents, images and audio and video recordings from The Dispatch.

"We're pleased to see the court rule in favor of openness by upholding the public records laws," said Dispatch Editor Alan D. Miller. "And we are eager to see Powell officials turn over the records they should have made public months ago."

Clark agreed with The Dispatch that while the law allows specific information that identifies uncharged suspects to be redacted, entire records cannot be withheld under that exception.

Judge: More of Cincinnati City Council's secret texts must be released

From The Cincinnati Enquirer

Secret texts between a majority of Cincinnati City Council were released (October 19) but a judge said a few days later all texts relevant to those conversations – even if they're just between two members – must be released.

It was a bombshell decision that attorneys representing the city fought against, as did a private attorney for Councilman P.G. Sittenfeld. Never before have such limited conversations among Cincinnati city officials been made public.

"Elected officials, when you get elected to an office, I think some think they work for themselves," said Hamilton County Common Pleas Court Judge Robert Ruehlman. "They work for the people. Although some (of the texts) might be embarrassing, they should be released."

At that, Ruehlman said the limited text conversations should be given to attorney Brian Shrive, who is suing five members of council on behalf of citizen Mark Miller, alleging the members held public meetings via text.

Those members, P.G. Sittenfeld, Chris Seelbach, Greg Landsman, Tamaya Dennard and Wendell Young admitted Friday the group conversations happened and released them to Shrive and the Enquirer. But they did not release any texts between fewer than five members.

Common Cause Ohio calls for more transparency and improved recusal standards

From Common Cause Ohio

On October 1, Common Cause Ohio released a study examining campaign contributions to the candidates for the Ohio Supreme Court and called for the Ohio Supreme Court to strengthen recusal rules so that judges step away, rather than hear the cases of their campaign contributors.

"The idea that judges should not be able to hear the cases of campaign contributors is such common sense that many people assume it is already the case," said Catherine Turcer, Common Cause Ohio's executive director. "Courtroom decision made with a conflict of interest can have a dramatic impact on people's lives. We need to establish stronger recusal standards so that judges are insulated from the influence of wealthy donors and so that Ohioans can feel confident in the impartiality of judicial decisions."

Together, the candidates for justice of the Ohio Supreme Court raised nearly $900,000 from January of this year through the month of August.

"The idea that judges should not be able to hear the cases of campaign contributors is such common sense that many people assume it is already the case," said Catherine Turcer, Common Cause Ohio's executive director. "Courtroom decision made with a conflict of interest can have a dramatic impact on people's lives. We need to establish stronger recusal standards so that judges are insulated from the influence of wealthy donors and so that Ohioans can feel confident in the impartiality of judicial decisions."

To read the full report, go to https://www.commoncause.org/ohio/resource/can-money-buy-justice-contributions-to-ohio-supreme-court-candidates-2018/

Enquirer sues Cincinnati over delayed open records responses

From The Cincinnati Enquirer

The Cincinnati Enquirer on (October 5) sued the city of Cincinnati in Ohio's Court of Claims for access to public records in seven different cases involving delays or incomplete records.

The disputes involve several different city agencies and include at least one request that has not been filled for nearly 18 months.

In several of the cases, repeated requests were made for the records over the course of several months.

And while declining to fill the requests, the city never cited any exemptions to the records law and never provided updates on the process.

"It's unfortunate we have been forced to take legal action against the city to obtain public records, but we will always fight for government transparency," Enquirer Executive Editor Beryl Love said. "Other municipalities we cover fulfill these types of requests in a timely manner, so it's hard to understand why the city of Cincinnati has let these requests drag on for so long."

The Enquirer filed in the claims court under Ohio's relatively new system designed to streamline open records disputes.

The cases now go to immediate mediation as a way to avoid further legal actions. But The Enquirer still reserves the right to take further legal action if mediation is unsuccessful, Enquirer lawyer Jack Greiner said.

"The Enquirer has been extremely patient with these requests. At this point, we think it appropriate to ask the Court of Claims to intervene," Greiner said.

A spokesman for the city administration declined to comment, saying officials needed to review the lawsuits.

OHIO ROUNDUP

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Ohio State football probe didn't attempt to recover deleted texts

From The Wall Street Journal

The day Ohio State football coach Urban Meyer was placed on administrative leave over his handling of abuse allegations against a longtime assistant, he asked a colleague how to delete old text messages from his university mobile phone, outside investigators hired by the university said in a report released last month.

Yet the legal team investigating Mr. Meyer's conduct, led by former Securities and Exchange Commission chairwoman Mary Jo White, decided not to send Mr. Meyer's phone to a forensics lab to determine if he actually destroyed evidence, according to two people familiar with the matter.

… Jack Greiner, a Cincinnati-based lawyer who specializes in media law, says Ohio State's records-retention policy requires saving correspondence that isn't transitory–not including, for instance, a text message saying you'll be home late–for at least one year.

"A blanket practice of deleting texts violates the records-retention policy on its face, which therefore constitutes a violation of the [state] statute," Mr. Greiner said.

Work of Montgomery County Jail oversight committee shielded from the public

From The Dayton Daily News

The work of a citizen committee created to review operations at the Montgomery County Jail has kept its work shielded from the public since August, cancelling public meetings and meeting privately in smaller groups.

Montgomery County commissioners created the Justice Advisory Committee in 2017 to provide a report including recommendations for improvements to jail operations and facilities. The committee hired CGL Companies of Lexington, Ky., to assess operations at the jail and report back to the group.

Some of CGL's findings became public during committee meetings held in July and August at the downtown Dayton Metro Library. In presentations made to the group, the consultants noted inadequate staffing and poor facility design, and said changes were needed in some operational policies, including when and how to use force or put an inmate in a restraint chair.

But the co-chairs of the committee, Rabbi Bernard Barsky and Dr. Gary LeRoy, said they became frustrated by news reports following those meetings, saying the information presented by CGL consultants — while critical of some jail operations and policies — was not a finished study.

Cleveland Heights Charter Review panel nixes Sunshine Law proposal

From The Plain Dealer

Unable to concur on a "prescriptive" or "aspirational" approach to open government, the Charter Review Commission has set aside a proposal to add a "Sunshine Law" provision to the city's home-rule constitution.

Introducing her revised open meetings provision on Aug. 16, CRC member Carla Rautenberg noted that the charter, adopted in 1921, has been referred to as the "DNA" of the city.

"That's why I think it's so important to have the Sunshine Law in the charter," Rautenberg said of draft language proposing that the city "meet and exceed" state requirements for open meetings that date back to the post-Watergate era.

This would have included keeping minutes of all "committee-of-the-whole" meetings, although it was noted that council now records them, even after the "home-rule" charter withstood a Sunshine law challenge and appeal that the Ohio Supreme Court has declined to hear.

Arguing that the city already has a "boatload of transparency," CRC Chairman Jack Newman questioned whether Rautenberg's proposal needed to be embedded in the charter.

"What conspiracies have succeeded because of the system we have?" Newman asked.

Canton Repository uses public records to determine who paid for new Hall of Fame stadium

From Ohio.com

Throughout its reconstruction, confusion has circulated about how Tom Benson Hall of Fame Stadium was paid for — mostly, about how much public money helped to finance the nearly $139 million project.

The answer: $15 million.

The rest of the stadium was paid through private donations and loans, according to financial documents The Canton Repository obtained through public records requests.

Comparatively, most football stadiums built in the past decade have relied on at least 25 percent funding in public dollars, usually far higher percentages.

Budget documents prepared by developers and filed with the Stark County Port Authority detail how much the stadium cost, where money came from and how costs changed during construction. They show the financing plan largely relied on equity, loans and naming rights — not on public support.

Benson Stadium was dedicated last August, but some work remains. The east end zone needs to be built, estimated to cost $8 million, as does the permanent scoreboard, which will be part of the facade of another building envisioned for the Village.

The stadium is the most visible component of the nearly $1 billion Johnson Controls Hall of Fame Village planned for the campus around the Pro Football Hall of Fame.

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Purdue's secret OxyContin papers should be released, appeals court rules

From STAT News

A Kentucky appeals court on (December 14) upheld a judge's ruling ordering the release of secret records about Purdue Pharma's marketing of the powerful prescription opioid OxyContin, which has been blamed for helping to seed today's opioid addiction epidemic.

The records under seal include a deposition of Richard Sackler, a former president of Purdue and a member of the family that founded and controls the privately held Connecticut company. Other records include marketing strategies and internal emails about them; documents concerning internal analyses of clinical trials; settlement communications from an earlier criminal case regarding the marketing of OxyContin; and information regarding how sales representatives marketed the drug.

The unanimous opinion by a three-judge panel is a victory for STAT, which filed a motion more than two years ago to unseal the records — which were stored in a courthouse in a rural county hit hard by overdose deaths. STAT won a lower-court order in May 2016 to release the documents, but after Purdue appealed, the judge stayed that order.

"We're tremendously encouraged by this ruling," said Rick Berke, the executive editor of STAT. "More than two years after we filed this suit, the scourge of opioid addiction has grown worse, and the questions have grown about Purdue's practices in marketing OxyContin. It is vital that that we all learn as much as possible about the culpability of Purdue, and the consequences of the company's decisions on the health of Americans."

New bill would finally tear down federal judiciary's 'ridiculous' paywall

From Ars Technica

Judicial records are public documents that are supposed to be freely available to the public. But for two decades, online access has been hobbled by a paywall on the judiciary's website, called PACER (Public Access to Court Electronic Records), which charges as much as 10 cents per page. Now Rep. Doug Collins (R-Ga.) has introduced legislation that would require that the courts make PACER documents available for download free of charge.

The PACER system has been on the Web since the late 1990s. To avoid using taxpayer funds to develop the system, Congress authorized the courts to charge users for it instead. Given the plunging cost of bandwidth and storage, you might have expected these fees to decline over time. Instead, the judiciary has actually raised fees over time—from 7 cents per page in 1998 to 10 cents per page today. Even search results incur fees. The result has been a massive windfall for the judiciary—$150 million in 2016 alone.

Critics like the legal scholar Stephen Schultze point out that this is not what Congress had in mind. In 2002, Congress required that the courts collect fees "only to the extent necessary" to fund the system. It obviously doesn't cost $150 million per year to run a website with a bunch of PDFs on it. Despite that, federal courts have used PACER revenues as a slush fund to finance other court activities. For example, one judge bragged at a 2010 conference about using PACER funds to install flatscreen monitors and state-of-the-art sound systems in court rooms.

New York unveils freedom of information website

From Government Technology

Gov. Andrew Cuomo unveiled a new website that he says will make it easier for the public and the press to access records from various state entities under New York's Freedom of Information Law.

The website, called Open Foil NY, offers a centralized online location to file FOIL requests with 59 state agencies and public authorities and was lauded by Cuomo as offering, for the first time, a uniform method to submit requests for government records through a single website.

In addition, Cuomo said the system will be the first of its kind in the nation that will provide an open-access records request "web form" that allows the requester to select multiple state agencies for a single records request.

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.