Ohio Coalition for Open Government

OPEN GOVERNMENT REPORT

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Ohio Supreme Court ignores 'actual cost' precedents in public records ruling

By David Marburger, Baker and Hostetler

The reasoning in unsigned Ohio Supreme Court opinions is increasingly disappointing, as the court's recent ruling against an Ohio trucking firm illustrates.

A federal law regulating commercial motor vehicles requires trucking companies that haul goods across state lines to verify the existence and accuracy of their truck drivers' commercial driver's licenses.

Ohio driver's licenses are public record in Ohio, but the Ohio Driver's Privacy Protection Act generally bars Ohio's Bureau of Motor Vehicles from disclosing a driver's "personal information" and "sensitive personal information." Those categories include a driver's name, photo, driver's license number, address and all other information that identifies the driver.

But one of the law's exceptions applied to Ohio trucking firms. The exception: The Bureau of Motor Vehicles can disclose personal information and sensitive personal information from a driver's license to a company seeking to verify an employee's commercial driver's license information.

Because of this exception, the bureau adopted a rule that requires anyone seeking a copy of a driver's record that includes the driver's personal information to complete a form that certifies that an exception applies, allowing the disclosure.

Although the bureau charges 5¢ per page for someone to get a copy of a driver's record with the personal information removed, the bureau's rule requires someone seeking a

(see **ACTUAL COST** *page 3)*

Do you want to know a secret?

Court says public lease terms don't have to be released

By John C. Greiner, Graydon Head

Readers my age may read that headline and immediately think of the 1964 Beatles classic by the same name – their first top 10 single featuring George Harrison on lead vocals. But for public records requesters, the answer to that rhetorical question may be "tough luck."

In the recently decided case of State ex rel. Luken v. The Corporation for Findlay Market of Cincinnati, the Ohio Supreme Court reiterated the legal principle that a public body may deny access to records maintained by a public body, even if those records disclose how the public body collects and expends and receives public funds.

The requesting party in Luken asked for lease agreements between the corporation that operated the city's Findlay Market and the vendors who rented space there. The records produced were redacted to prevent disclosure of the term and rent provisions. Luken filed a mandamus case in Ohio's First District Court of Appeals challenging the decision to redact the information. While there were a number of collateral issues concerning whether the Corporation for Findlay Market even was a public body, the court ultimately decided that in any event, the lease provisions concerning the term and rent qualified for protection under Ohio's Trade Secret statute.

In short, according to the First District Court, the lease information derived value from not being generally known, and the Corporation took reasonable steps to guard against its disclosure. The Supreme Court unanimously upheld that ruling. Missing from the decision was any discussion of whether it makes sense to shield from the public information about how the city collects revenue from renting public property. Thus, voters are left with virtually no means to determine if the city is discharging its duties in an efficient and effective manner.

The Luken decision is striking for the perfunctory manner in which the court addressed the issue. It is difficult to see any concern for the virtues of transparency or public access.

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Ohio Coalition for Open Government

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ONA pushes positive public records reforms

By Dennis Hetzel, OCOG President

Hetzel

The Ohio Newspaper Association has begun pushing four suggestions to improve Ohio's open records laws.

When Ohio's current open records statute became law, it was seen as nationwide model in many respects. That's no longer the case due to a combination of problematic court decisions and the phenomenon known by the cliché "death by a thousand cuts." We estimate there are more than 300 exceptions to the open records law in Ohio statutes, including 29 listed in the law itself.

Every legislative session brings new reasons for why new exceptions to openness are needed. As I write this on May 29, a House committee just fast-tracked an amendment to the House floor that appears to reduce transparency of JobsOhio. Despite Auditor Dave Yost's request to at least wait a week so the proposed language can get a proper hearing, the House placed new restrictions on access to information about the economic development agency, which is funded with profits from the state-run liquor stores.

Meanwhile, issues raised by our digital age emerge all the time. In fairness, many of these issues raise legitimate concerns for public officials. For example, the sheer explosion in content means that many records requests take additional staff time to address.

We also are encouraged by the efforts of several well-meaning legislators and statewide elected officials to improve transparency. There are pending bills and initiatives to put a considerable volume of information about state government spending online. Two Republican House members are working to set standards so that information posted to the Internet is easier to search and organize – and remain freely available to the public.

A group of editors, legal experts and OCOG board members met over the winter to discuss the problems. We decided to continue to deal with the rollback efforts case-by-case and suggest four improvements to improve access to information in Ohio. Here they are:

1. Improve the definition itself

Attorney Dave Marburger calls this the "stealth exemption." Court decisions have become so literal that the burden of proof has shifted so that the party wanting the record has to prove it should be open. This is the opposite of any good open records law. Examples are myriad and troubling.

The problem lies in a clause that says a record has to "document the organization, function, policies, decisions, procedures, operations, or other activities of the office."

We are proposing a definition that rests on the information that is recorded by government in any medium without a focus on documenting specific items. This definition also corrects the problem of records created by the unauthorized actions by public officials not being seen as records.

In our definition, a record is simply anything that is "recorded on a tangible medium" and "recorded or received by any person on behalf of a public office, or its retention or disclosure is controlled by any person on behalf of a public office."

This would not change any existing exceptions in the law, and we added language to protect incidental, personal items that public employees bring to work.

2. Improve language on attorney fees for violations

Violations of open meetings and open records law should provide a realistic opportunity for the plaintiff to recover legal costs while recognizing that these are taxpayer dollars. The purpose of the law should not be punitive except in the most egregious of cases. When a violation occurs, however, some award of reasonable costs should be required. The other side continues to have a right to question the amount of the award.

Right now this is optional, and it is rare indeed for fees to be awarded. Few citizens and even media outlets will undertake the costly court battles that can ensue over open records if there isn't a chance of at least breaking even.

This also could be applied to the open meetings.

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3. Fix the charter school problem

The ONA has no position on whether charter schools are good or bad public policy. However, we have a strong belief in the importance of open records when it involves public education and public money. Ohio journalists and other citizens have had a difficult or impossible time getting meaningful information on the expenditure of taxpayer dollars and school performance metrics.

We have offered a simple language suggestion: Every charter school contract should include a provision that the entity must comply with the open records law.

4. Don't encourage document destruction

Business, historians, archivists and everyday citizens have lots of reasons to see older public records. We think the Legislature went too far in 2011 when it eased any penalties or liability for public bodies that improperly destroy public records.

For example, there is no penalty unless an action is started within five years of the violation instead of starting the clock upon discovery of the violation. You don't know what you don't know. The caps on legal fees also are way too low, and actually make it attractive for a public official with something to hide to go ahead and accept the penalty for destroying a record that might prove damaging.

We are just starting to show these ideas to potential legislative sponsors. Please lend your voice in support, and definitely let us know if you would like more details.

Dennis Hetzel is executive director of the ONA and president of OCOG. Send e-mail to dhetzel@ohionews.org.

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driver's information under an exception to receive only a certified copy, and to pay 100 times more for it: $5 per page. A copy is "certified" when a clerk at the bureau stamps a notation on the record saying that it is an authentic copy from the bureau. The bureau's rule does not address the cost of uncertified copies of driver's records with the personal information left intact.

A trucking firm, Motor Carrier Service of Toledo, completed the bureau's form, and asked to verify the driving record of an employee who has an Ohio commercial driver's license. The company asked for "personal information" – that which identifies the driver – and certified that an exception applies.

But the firm specified that it did not need or want a certified copy. And it insisted that, because the firm did not want the bureau to certify the copy, the bureau's usual fee of 5¢ per page should apply because that's what the bureau typically charges under the Public Records Act as its actual "cost."

The bureau, however, insisted on supplying only a certified copy and charging no less than $5 per page. The trucking firm sued the bureau in the Ohio Supreme Court, which ruled unanimously in an unsigned opinion against the trucking firm.

The opinion reasoned that the bureau's rule superseded the Public Records Act because the rule applied specifically to the bureau's driver's information, whereas the Public Records Act applies generally to all public records kept by all public offices.

But the court did not faithfully apply its precedents. In an earlier case, for example, attorney Jim Slagle asked a common pleas court to provide photocopies of a transcript filed in a court case, demanding a low "actual cost" fee under the Public Records Act. Because a specific law required the court to charge $2.60 per page for "copies" of court "transcripts prepared from audio tape," that specific law trumped the Public Records Act.

But Slagle also asked for a copy of the audio tape from which the transcript was typed. The local judge refused to lower the fee, arguing that the lower fee of the Public Records Act would allow anyone to circumvent the $2.60/page statutory fee for the verbatim record in transcript form.

Slagle sued in the Ohio Supreme Court, and the court ruled for Slagle in 2004. The Court ruled that the specific law displaced the Public Records Act only when the verbatim record was a "transcript," but it did not displace the Public Records Act when the verbatim record was in some other form not mentioned in the statute.

Similarly, last year, the Ohio Supreme Court ruled that a specific law requiring county recorders to charge $2/page for "photocopying" recorded deeds displaced the Public Records Act only for duplicating recorded deeds on paper using the process of photocopying. The court ruled that the Public Records Act's much lower "actual cost" governed copies of a county recorder's compact disks containing digital copies of recorded deeds. The court limited the county recorder's fee to $1 for each copy of each disk.

Yet in the trucking firm's case, the court did not apply that reasoning. Had it applied its precedents validly, the court would have ruled that the bureau's $5/page fee displaced the Public Records Act only for the "certified" copies specifically addressed in the bureau's rule. For uncertified copies – which the rule did not mention – the Public Records Act should have governed, and so its "actual cost" limit should have applied.

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But all is not lost. In a decision handed down by the First District just months after its May, 2012 Luken decision, the court ruled that a vendor who'd submitted a bid to construct the city of Cincinnati's streetcar system could not prevent the city from turning over an unredacted version of that bid in response to a public records request.

In that case, Brookville Equipment Corp. v. Cincinnati, the First District noted that the streetcar vendors submitted their bids pursuant to a Cincinnati ordinance that expressly required those bids be open to public inspection. Because that ordinance gives the public the right to inspect the bids, parties submitting bids thus waive any trade secret protection that might otherwise apply. The Supreme Court's decision in Luken does not in any way limit the Brookville decision. In Luken no ordinance required public inspection of the leases.

If the Luken decision is a step backwards for transparency, the Brookville decision at least limits the size of the step. So if you want to know a secret, you may want to take a close look at the ordinances and regulations surrounding the submission of the "trade secret" information.

John C. Greiner is a partner at Graydon Head LLC, where he practices commercial litigation and First Amendment law.

David Marburger's Open Government Commentary

Despite Ohio Supreme Court ruling, copyrighted software should not be bar to public records

By David Marburger

"The county engineer in this case has intertwined public records with proprietary software and expects citizens seeking public records to pay an exorbitant price to untie the knot." With that opening dissenting remark, Ohio Supreme Court Justice Paul Pfeifer pinpointed the overall flaw in a remarkably misguided, unsigned opinion by the Ohio Supreme Court.

The court's decision came in March in a suit by Robert Gambill, Portsmouth, against the Scioto County Engineer, Craig Opperman. Gambill owns and operates a real-estate-appraisal business that relies on tax maps and aerial photographs that the county engineer keeps in digital form. The tax maps and photographs, together, show all land within the county.

Before 2007, the county engineer allowed the public to buy digital copies of tax maps and photographs on compact disks for $200, with updates available for $50. Gambill bought a disk in 2006, which covered tax maps and aerial photographs created in 1999 and 2000. He could display them on his own computer and then print them.

The tax maps relied on data kept by the Scioto County Auditor, derived from deeds recorded by the Scioto County Recorder. To use that data, the auditor relied on software created by a company called Manatron, Inc. In 2007, Manatron updated the software, which made it incompatible with the software used by the county engineer for the tax maps and aerial photos.

The county engineer then hired another firm, Woolpert, Inc., to create software to allow the engineer's digital information system to be compatible with the auditor's updated software. The result: When someone wants a tax map or aerial photo of particular real estate, that person types in information as a search; the software then enables the county's computer system to pull information from electronic data files to create a readable tax map. The data downloads from the auditor data system to the engineer's data system to create the tax map. Without the software, the data cannot be compiled into a readable tax map.

Woolpert registered the software with the United States Copyright Office, and insisted that the federal copyright law barred the county engineer from making a copy of the software without Woolpert's permission. So the county engineer could no longer provide electronic data to the public for tax maps and aerial photos without also providing a copy of Woolpert's copyrighted software.

Gambill asked to purchase a copy of the 2010 version of the engineer's electronic database for the tax maps and aerial photographs. But Engineer Opperman said that copyright law barred the county from also providing the software that would enable Gambill to comprehend the data, so Opperman insisted that Gambill pay an estimated "minimum" fee of $2,000 for Woolpert to retrieve the data by separating it from the copyrighted software.

Gambill sued the county engineer directly in the Ohio Supreme Court and lost, 6-1 with Justice Pfeifer dissenting. Agreeing that Gambill had requested public records under the Public Records Act, the majority ruled that the federal copyright act barred the county from providing Gambill with a copy of the decoding software. The court decided that, because the data was "inextricably intertwined" with the copyrighted software, Gambill would have to pay the minimum fee of $2,000 to have Woolpert un-entangle the data from the software.

The court applied an unrelated statutory provision that, on its face, applies only to Ohio's Bureau of Motor Vehicles, which allows the bureau to pass on to the public 100% of a private contractor's fee to extract requested data. Therefore, forcing Gambill to pay Woolpert's minimum $2,000 fee to extract the data away from Woolpert's software made was "reasonable," the court ruled.

Dissenting, Justice Pfeifer blasted the ruling. "A person seeking public records should expect to pay the price for copying the records, but not the price for a public entity's mistake in purchasing inefficient software," Pfiefer wrote. "Will every citizen asking for what realtor, Robert Gambill, seeks – access to records that the majority acknowledges are public records – also have to pay $2,000?"

Justice Pfeifer validly criticized the court's decision, but an even more compelling ground undermines the court's decision. The authority for the county to buy and use the Woolpert software came solely from the citizenry. And the money to buy the software came solely from the citizenry. The only public policy that makes sense, then, is that the citizen's agents in conducting public business can't deprive the citizenry from the benefit that we citizens authorized the agents to buy and for which we supplied all of the money. If, in working to benefit the public, the public's agents found organizing electronic records a particular way was beneficial for the way that they use records in performing their public duties, they can't deprive the public of that same benefit when the public wants to use that same information.

And pricing copies of public records out of reach of ordinary citizens effectively strips copies of public records of their availability to the public, relegating the public to onsite inspection only. The Public Records Act gives us a right to take home copies of public records, but the court's decision effectively destroys that right as applied to people of ordinary financial means. Only the wealthy can afford to have copies of public records under the court's reasoning.

Moreover, the federal copyright act should be no bar, and Gambill should have tested the act's provisions in this context. He didn't. He should have argued, and the court should have ruled, that, when a private firm contracts with an Ohio government agency to provide copyrighted software for organizing public records, the firm implicitly grants a license to the agency to provide copies of that software to the public to enable the public to comprehend copies of those public records.

Ohio Supreme Court: Requested public records are never "meaningless"

By David Marburger

Public offices don't get to withhold public information by deciding that the information would be "meaningless" to the person requesting it, the Ohio Supreme Court has ruled.

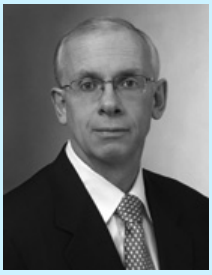
The court required the City of Vermilion to release portions of bills that the city received from its outside law firm. The city's former mayor, Jean Anderson, asked for the bills to compare the cost to the city of outside legal services under the city's new mayor with the cost for those services under Anderson's administration.

The bills showed the title of the matter that outside law firms handled, a narrative description of the services rendered, the hours spent, and the amount of fees to be paid. However, the city withheld all of the billing information, claiming attorney-client privilege.

The court ruled that the attorney-client privilege allowed the city to withhold the narrative descriptions, but not the title of the matter being handled, the dates that the services were performed, the hours spent, the lawyers' hourly rates, and the fees ultimately charged.

The city claimed that it rightfully withheld the information that the court ordered it to disclose because, after redacting the privileged narrative descriptions, the remainder of the bills would be "meaningless." The court rejected that argument, concluding that the requester gets to decide which information matters to the requester, not city officials.

About David Marburger



Marburger

David Marburger is a partner in the Cleveland office of Baker & Hostetler and an authority on legal issues arising from the content side of communications and around issues of constitutional law. Marburger is a member of the Ohio Coalition for Open Government committee and has represented many clients in Sunshine Law cases. He has also co-authored *Access with Attitude*, a 350-page "advocate's guide to freedom of information in Ohio," published by Ohio University Press.

Ohio Supreme Court grants new open records exception to attorney general's office

By David Marburger

Where someone holds a local public office unlawfully, Ohio's attorney general can seek a court order to unseat that person. That was the setting last January when the Ohio Supreme Court ruled that, when lawyers within the attorney general's office confer about bringing such suits, their written communications are not public records.

The court reached that decision when a Clermont County man, Kent Latham, asked the attorney general's office to provide copies of internal records about a complaint that the office had received about a state representative, Danny Bubp, who was holding two public offices at the same time. Ohio's Constitution bars members of the general assembly from holding other state or local government posts. Bubp was a magistrate in a southern Ohio mayor's court while also serving as a state representative from the same area.

The attorney general provided Latham with a variety of records but withheld several internal e-mails, citing the attorney-client privilege. Latham sued in the Ohio Supreme Court, arguing that the privilege did not apply because there was no "client," but only government lawyers of the same office talking among themselves.

The Ohio Supreme Court disagreed. The court ruled that the e-mails were "communications between a client – in this case, members of the administration of the attorney general's office who asked for legal advice – with an attorney – in this case, members of the opinions section of the attorney general's office."

The court called its ruling "obvious," but given that only lawyers within the attorney general's office decide how to administer it and decide for themselves what actions the attorney general takes in its own right – as opposed to when the state agency makes those decisions with the attorney general in the subordinate role as counsel – the court's ruling seems to provide an especially extensive privilege to the attorney general's office.

Shadows lengthen on access to public records

By Dennis Hetzel, OCOG President

Every year, Sunshine Week underscores the importance of open government across the nation. It is a perfect moment to share concerns in Ohio about ever-growing exceptions to an open records law that should ensure you have access to information about what your government officials do and how well they do it.

Whether you're a Tea Party activist, just an everyday citizen or an unrepentant liberal, we think you should be able to agree on this subject. The exception train needs to slow down.

Ohio's statute once was considered a model open records law nationally. Most public officials are well-intentioned, and it's often the case that each idea for a new exception has a justification that appears reasonable in isolation. It is the cumulative effect that alarms us.

We now have 29 categories of records that are secret under Ohio law. They've run out of single letters, so the latest exception was lettered "cc." I have seen proposals already in the new legislative session involving fees for county recorder records, new restrictions on school-related records and more. Certain categories require repairs, too. For example, the lack of information on how taxpayer money is being spent at many Ohio charter schools should be fixed.

Government is a custodian of public records, not the owner. Restrictions on access should leap a high bar; there should be no reasonable doubt that secrecy is the better option.

For example, no one would argue that everything in an active criminal investigation should be public record. However, did you know that a criminal case file isn't considered closed in many Ohio jurisdictions if the defendant ever could file something in the case for any reason? This blocks the work of not only journalists but also organizations such as the Ohio Innocence Project that have freed people from prison for crimes they didn't commit. (And, by the way, many Innocence Project investigations show that law enforcement arrested the right person.)

Government officials also complain about the amount of staff time and expense it takes to manage records requests, particularly with the explosion of records in the Internet age. That's a reasonable concern. Still, if there weren't so many exceptions and complexities in our open records laws, it would be faster to review records with much less need to redact information by blacking it out either on paper or digitally. In other words, making more records open makes it easier for government to handle requests.

There have been positive developments in recent months, too. We urge citizens to make use of the new open records mediation process announced in 2012 by Ohio Attorney General Mike DeWine.

This is a good way to resolve disputes without having to hire a lawyer and go to court, and the process can be initiated with a simple phone call or filling out a form on the Attorney General's website.

However, the program is limited in that both sides have to agree, and it only applies to local governmental bodies. We hope a way can be found to expand this in the future. Most states have a stronger appeal process.

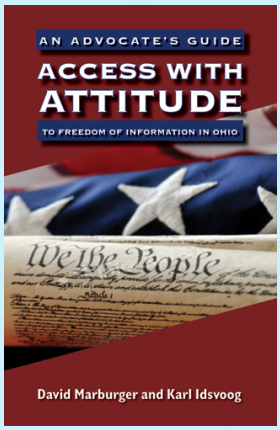
The other aspect of "sunshine law" involves open meetings. Here, I think the situation is more positive in Ohio. We only are aware of one pending measure to expand the use of secret meetings called executive sessions. We would like to see better record-keeping or recording in executive sessions, and our association hopes to pursue that idea in the coming months.

Ohio's statute once was considered a model open records law nationally. Most public officials are well-intentioned, and it's often the case that each idea for a new exception has a justification that appears reasonable in isolation. It is the cumulative effect that alarms us.

We also have been working positively with government groups to set good standards for situations in which it might make sense to allow some members of a board to participate remotely through audio or video technology.

Even though Sunshine Week is now past, I hope you will continue to let your elected officials know that transparency matters. And if you need help making contact or need any background information, just let us know, because a government operating in lengthening shadows will not serve the people properly in the long run.

Receive discount on open government reference book and support OCOG



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

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

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

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

A public-records primer: How to make a request

By Randy Ludlow,
The Columbus Dispatch

Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives.
– James Madison

In celebration of Sunshine Week, here's a primer on making public-records requests in Ohio. It's your government, your money, your records. Government merely is the custodian of the people's records – not the owner.

Know the law because an alarming number of government officials and employees don't. Download a copy of the newly updated "Yellow Book" manual of Ohio Sunshine laws (from www.ohioattorneygeneral.gov) and familiarize yourself with the law. It can be complex.

It's generally best to request routine records verbally. Written requests can be seen as adversarial and drag in the lawyers to delay and complicate your request. However, if your request is complex or could generate push-back, file a written request to bring clarity to the matter and document your request should trouble ensue.

Here's a fill-in-the-blanks form letter you can download to request public records. (Link to letter available at www.dispatch.com/content/blogs/your-right-to-know/2013/03/primer.html)

Know that asking to inspect records in person should allow you to see them more quickly. Requesting copies buys government more time to provide the records. You also are entitled to receive records in the form in which they are kept (electronic, database, etc.) and they must be delivered in the manner you prefer – email, CD, fax, or in-person pick-up. If you ask for records to be mailed, you can be asked to pre-pay postage costs.

Ohio is among only a handful of states that sets no deadline for government to provide records. The legal standard is "prompt." Court rulings have signaled, though, that waits of more than two weeks likely are unreasonable.

Outside of minimal copying costs – such as 5 cents a page for paper copies or $1 for a CD containing electronic copies – government cannot charge you to provide records. Don't allow government to bill you for employee time or other "costs."

"Overly broad" has become government's new mantra in denying records requests. Be very specific in describing the records you seek. Provide names, date ranges, topics and describe the records you seek in full detail. If your request is confusing or denied, government is required to work with you to clarify your request so records can be provided.

If your request is denied, or information is redacted, an explanation must be provided in writing. Government that denies records or blacks out information is required to cite specific public-records exemptions or other sections of law that it believes allows it to withhold records. Again, consult the law and evaluate the reasons for denial; appeal and argue if the excuse is iffy.

If dealing with a local government or school district that denies your request or is slow to respond, ask for help through the public-records mediation program offered by the office of Ohio Attorney General Mike DeWine. Lawyers who know Sunshine laws could help shake your records loose.

They're your records. Go get 'em.

Grants could help local officials to make records more accessible

Editorial from The Columbus Dispatch

Taxpayers should know where their money goes, what their local government does and whether it is a good steward of public dollars.

While Ohio has better-than-average "sunshine" laws governing public-records accessibility, a proposed new law would help ensure that public information from Ohio's hundreds of local-government entities is available online, is searchable and can be compared oranges to oranges with data from other local governments throughout the state.

Championed by Rep. Mike Duffey, R-Worthington, and Christina Hagan, R-Alliance, the DataOhio Initiative sets guidelines and establishes grant funding for local governments to put their data in a common, searchable format online. The effort would use commonly available, free software and would establish $10,000 grants to help pay for the time that Ohio's 2,334 general-purpose governments – counties, cities, villages and townships – would need to dedicate to making their data accessible through a common portal.

This is a common-sense idea that would provide benefits to everyone at a modest cost.

The state budget now being considered by the Ohio Senate initially would provide $3.5 million for the grant program, with the opportunity to expand funding later.

The initiative is voluntary, but Duffey thinks the $10,000 grants for a project that needn't be time-consuming should prove compelling to local governments. Local officials themselves could benefit from benchmarking against peer cities; Duffey recalls that as a member of Worthington City Council, he found it difficult to compare metrics on how his city was doing with other cities around the state.

"With more information, people are going to make better choices," Duffey told The Dispatch recently. "And with better choices, the cost of government is going to come down…natural efficiencies of scale are going to occur."

The basic idea of the initiative has been championed for years by Gene Krebs, a former Ohio House member. Representing the Greater Ohio Policy Center, with which he was working a year ago, Krebs told the Ohio Senate that "Ohio is still a data desert" for those seeking to evaluate their local government's performance and compare it with its peers.

The drive to encourage efficiency at the local level is critical to the state's interest in making Ohio tax-friendly for residents and businesses. Rob Nichols, spokesman for Gov. John Kasich, told The Dispatch in discussing the issue a year ago that while state-level taxes have been reduced, "Ohio's local-government taxes increased 41.6 percent from 1999 to 2009" according to the U.S. Census. "It's unsustainable and is a barrier to job creation," Nichols said.

Duffey also predicts making data easily accessible would create opportunities for private-sector research that could be commercialized or create jobs; he cites the growing field of "big data," based on data analytics, and the recent decision of IBM to locate its new Client Center for Advanced Analytics in the Tuttle Crossing area.

He says the DataOhio Initiative would encourage more jobs in Ohio in the well-paying and growing field.

By simply making already-public data more accessible, this project can benefit all: residents, the private sector and the public sector.

Unless indicated, all articles excerpted from state and national news sources. For links to the complete articles, go to www.ohionews.org/category/ocog.

OHIO ROUNDUP

Kasich signs bill to close JobsOhio's books

Editor's Note: *The ONA sent letters to both House and Senate members urging them to delay this bill so the changes in the law to limit the auditor's authority could be debated more fully.*

From The Columbus Dispatch

Gov. John Kasich signed the bill that will keep the state auditor's eyeballs largely off of JobsOhio's books.

Senate Bill 67 – which will prohibit state Auditor Dave Yost from inspecting the state's wholesale liquor profits funding JobsOhio – was one of five bills the governor signed in private (on June 4).

That Kasich signed these pieces of legislation outside of a public ceremony is nothing new. The Republican governor signs most of the bills the legislature sends him without calling a news conference, but there's an irony in signing a bill in private that strips a level of transparency away from JobsOhio.

The bill ensures that the $100 million a year JobsOhio will be getting from a lease of state wholesale liquor profits is considered private money and cannot be audited by Yost. The funds will undergo an audit by a private firm.

But Kasich's signature might not end the argument over whether the state's liquor profits are private dollars. The liberal policy group ProgressOhio and some Democratic legislators have a lawsuit pending that says the state cannot "invest" public money in JobsOhio.

"The money came from a source that is public, it's been audited and used as public ... and just because the legislature plays games with the law, legislatures can't supersede the Ohio Constitution," said Brian Rothenberg, executive director for ProgressOhio. The lawsuit is waiting on the Ohio Supreme Court to decide whether the plaintiffs have standing to sue.

Group criticizes Ohio's transparency on spending

From The Akron Beacon Journal

Ohio does a poor job of providing online transparency when it comes to government spending, a watchdog group says in a report released (March 26).

The state received a "D+" – one of only 12 states to receive a "D" or "F" grade – in the annual report by the Ohio Public Interest Research Group Education Fund. Ohio's grade improved from last year's "D."

"We could have done a lot better," said Tabitha Woodruff, an advocate for the Ohio watchdog group. "There is an improvement … but it still leaves us as one of the lagging states. So, very disappointing."

She added that Ohioans are demanding transparency, so it should be a greater priority.

The report, called Following the Money 2013: How the States Rank on Providing Online Access to Government Spending Data, reviewed the Ohio website transparency.ohio.gov.

It says the site provides checkbook-level information on contracts, economic development tax credits and grants. But it lacks other details such as noncontract payments to vendors and spending through some agencies.

Other states provide such information, Woodruff said.

She added that both Republican and Democratic-run states fared equally well, so transparency isn't a partisan issue.

Attorney General releases 2013 edition of Ohio Sunshine Laws, touts open records mediation

On March 11, Ohio Attorney General Mike DeWine marked Sunshine Week with the release of the 2013 edition of *Ohio Sunshine Laws: An Open Government Resource Manual*.

In a statement DeWine said, "Part of our mission to protect Ohio families includes protecting the public's right to know and to hold their government accountable The Ohio Attorney General's Office offers many resources to help Ohioans access open government, including our Sunshine Laws Manual, Sunshine Laws trainings, and our Public Records Mediation Program."

As reported by Gongwer News Service, Mr. DeWine said the mediation program was "a win-win for both local governments and those requesting records. Requesters get the information they seek and taxpayers avoid costly litigation."

The AG's office told Gongwer that as of March the program had received 59 requests for mediation, and 23 of those were resolved prior to going through mediation. Of the seven mediations completed, six were successful. Of the requests for mediation that met program criteria and where the persons requesting the mediation chose to pursue their request to resolve the matter, the program has fully resolved 32 of the 38 disputes, or 84%.

Cincinnati Enquirer analysis finds state government keeping more secrets

In a detailed analysis released by The Cincinnati Enquirer in December, the newspaper found that Ohio's state government is keeping more secrets as exceptions to open government laws increase and fees keep many from accessing the public's information.

As the Enquirer detailed, since the state enacted its first public records law in 1963, the number of legal exemptions to the law has grown from the one – medical records – to 29. That doesn't include hundreds of other exemptions, or fees charged to access the information.

As examples, the paper stated that when Ohio legislators created an arson offender registry much like the state's sex offender registry, supposedly to deter the crime, they made the names not subject to open records. Another example is when the Ohio Supreme Court ruled that asking for the emails sent to and from public officials was too "ambiguous" for public records requests.

Fill open records requests ASAP, AG official says

From The Vindicator

A state attorney general office official advises local government to "go above and beyond" when it comes to honoring legitimate open-records requests.

That means filling the request as soon as possible, working with those seeking the information, and it's not a bad idea to forgo charging a fee to those making the inquiries to create good will, said Jeff Clark, principal assistant attorney general.

Clark spoke (April 29) to about 60 to 70 government officials and community activists at a three-plus-hour training session at the Newport Branch of the Public Library of Youngstown and Mahoning County on the city's South Side.

Nearly all of the session focused on open records with about 10 minutes at the end discussing open meetings.

"It can be very confusing when you get a request" for public records, said Youngstown Councilwoman Annie Gillam, D-1st, who attended Monday's session. "It can get complicated. It's always good to hear it for yourself."

The state Legislature has changed Sunshine Laws – those dealing with open records and open meetings – over the years, and there have been court decisions resulting in other changes, so it's important for public officials to understand the law, Clark said.

Otterbein University won't demand students keep mum on sexual assaults

From The Columbus Dispatch

Otterbein University will stop requiring students involved in sexual-assault cases to sign confidentiality agreements, after student journalists discovered that the school was violating federal law.

After initially denying it, an official at the private liberal-arts school in Westerville told reporters for the student newspaper on (May 6) that he didn't realize Otterbein had had victims, as well as others, sign a nondisclosure clause. The requirement is being dropped.

Earlier, (Otterbein's vice president of Student Affairs) told the student reporters that the nondisclosure clause was included in the form to conform with the Family Educational Rights and Privacy Act – FERPA – which prevents colleges from releasing student academic records, such as grades.

But public-records advocates said FERPA is not intended to allow schools to hide crimes.

Court: Hamilton County judge can't kick reporters out without holding a hearing

From The Cincinnati Enquirer

A court ruled (March 29) that a Hamilton County judge can't kick reporters out of court without holding a hearing.

The Cincinnati-based Ohio 1st District Court of Appeals granted a request by The Enquirer to prohibit Juvenile Court Judge Tracie Hunter from kicking a reporter out of court without the legally required hearing.

"Representatives of the Enquirer shall be permitted in the courtroom," Appeals Court Judge Lee Hildebrandt, Jr., wrote in (the March) ruling.

Hunter twice (in March) kicked the reporter out of court, accusing the Enquirer of ignoring her court order to not print names of juveniles charged in a beating case that drew national attention. The Enquirer never was served with Hunter's order before the evictions.

Website to help Ohioans track rules and regulations

From The Dayton Daily News

State agencies make more than 9,000 actions on rules and regulations each year about everything from driver's licenses to air quality regulations to low-income housing programs.

Lawmakers launched on (April 29) an online tracking system to make it easier for average Ohioans to navigate and track rule changes and public hearings on proposed rules. The RuleWatchOhio.gov website allows anyone to track specific rules or rules by subject, such as agriculture, cosmetology or education.

Lawmakers on the Joint Committee on Agency Rule Review said the goal is to better inform business owners and other Ohioans of rule changes that impact them.

Butler judge wants Enquirer suit dismissed

From The Cincinnati Enquirer

A Butler County judge wants the Ohio Supreme Court to dismiss The Enquirer's suit against him, saying he fixed his mistake in improperly sealing a case involving the Miami University rape flier and the issue is moot.

In a brief filed with the Supreme Court, part-time Judge Rob Lyons of Area I Court in Oxford also maintains The Enquirer has no right "to insert itself into judicial and prosecutorial functions that determined the outcome of the underlying criminal case."

"Once the Respondent Judge realized that the defendant's underlying plea agreement was being undermined, it was far more important to deal with that issue than to alter the process to cater to a newspaper looking for a story," the brief written by Butler County Assistant Prosecutor Dan Ferguson said.

The Enquirer sued Lyons in November after he immediately sealed the conviction of the former student who posted the "Top Ten Ways to Get away with rape," flier in a co-ed dorm. The Enquirer alleged the sealing was improper because Lyons did not hold a hearing and that Lyons had cited the wrong law on a form he signed to seal the case.

After The Enquirer filed suit and Lyons found out he had improperly sealed the case, the student was allowed to withdraw his plea and prosecutors decided not to pursue further charges. That allowed Judge Rob Lyons to correct a mistake he made sealing the case the first time. He sealed it again immediately after the plea withdrawal. Lyons said he routinely sealed cases of Miami University students.

Enquirer investigation: Thousands of Butler County crimes sealed from view

From The Cincinatti Enquirer

A few thousand people – many of them students at Miami University – have committed crimes in Butler County in the past 14 years that are kept secret. Their conviction records have been sealed.

It's a routine practice in the Butler County courtroom of Judge Rob Lyons. His use of the practice came to light after he granted secrecy to a former Miami student who admitted to creating a flier about how to get away with rape.

Lyons, a part-time judge whose private law practice helps clients seal their criminal records, admitted in a sworn deposition that he's been sealing cases improperly for the 14 years he's been on the bench. Lyons has sealed 2,945 cases – more than a third of the new misdemeanor cases filed – in the past five years, an Enquirer analysis shows, using data from area court officials and the Ohio Supreme Court.

OHIO ROUNDUP

Unless indicated, all articles excerpted from state and national news sources. For links to the complete articles, go to www.ohionews.org/category/ocog.

Ohio Association of Chiefs of Police says bill to block access to gun records clouds government transparency

From The Cincinatti Enquirer

A bill proposed (in early March) by a Southwest Ohio legislator would prevent journalists from looking at concealed carry gun permit applications – the latest in a nationwide surge of efforts to seal gun records from public view.

A spokesman of the Ohio Association of Chiefs of Police said the legislation clouds government transparency. But gun rights advocates say there's no news value in knowing who has a permit and the information should be private.

In the four-county Southwest Ohio region, 9,639 new and renewed permits were issued in 2012, according to an annual report by the Ohio attorney general's office. Statewide it was a record year with 78,810 concealed carry permits being issued. A license lasts five years and costs $55. More than 300,000 Ohioans have permits.

When the concealed carry law was enacted in April 2004, all the records were public. Three months later the Cleveland Plain Dealer published a list of all carriers and their ages in Northeast Ohio, which prompted the Legislature to tighten the law to its current status.

Under current law, only journalists, not the general public, are allowed to view concealed handgun information after filing a request with a county sheriff, who keeps the local permit information.

Court reversal not in Blade's favor

From The Toledo Blade

After 10 Toledo police officers and two civilians sued The Blade over a 1990 investigative series that probed into police misconduct, the lawsuit was dismissed on the grounds that the newspaper accurately reported the contents of public records.

The Blade later sought, and won, a further court ruling saying it was entitled to attorney fees for defending itself after that dismissal was appealed. Now, the 6th District Court of Appeals has reversed that decision, saying The Blade should pick up its $163,301 legal tab.

In a 21-page ruling filed recently, the appeals court ruled that Napoleon attorney George C. Rogers, who represented the police officers in the case, did not act "frivolously" and therefore attorney fees could not be awarded in the case.

"We're unhappy with the decision," said David Waterman, outside counsel to Block Communications, Inc., the parent company of The Blade. "We disagree with the decision, and we are still reviewing it and discussing it with representatives of The Blade."

Mr. Waterman said attorneys are evaluating whether to appeal the decision to the Supreme Court of Ohio or file a motion for reconsideration with the 6th District Court of Appeals.

Move to broadcast Ohio House hearings will be a public service

From The Columbus Dispatch

The Ohio House opened its 130th session on (Jan. 7) by vowing to be more open with constituents, by expanding the use of technology.

House Speaker William G. Batchelder announced that for the first time, some House committee hearings, particularly those involving the state's next two-year budget, will be broadcast live online and on public-access television. The House also will broadcast those hearings on issues that are of special interest to the public, he said.

The broadcasts will make it easier for average Ohioans – who can't just drop everything and come to Columbus to attend these sessions – to see in real time what their representatives are doing and saying on their behalf.

Knowing that the public is looking over their shoulder as they work might have a salutary effect on lawmakers. And the Ohio Senate should consider emulating the House.

The House committees also plan to move toward going paperless, with electronic tablets for bills and amendments. Not only does that cut expenses and waste, it also allows the public to access documents online more quickly.

Mandel settles suit over public records

From The Columbus Dispatch

The office of Ohio Treasurer Josh Mandel has turned over once-denied documents and paid $5,250 to settle a lawsuit claiming it acted illegally by failing to provide public records.

The agreement between the liberal-leaning political blog Plunderbund and Mandel's office led last week to the dismissal of the blog's filing that asked the Ohio Supreme Court to order the release of records.

Plunderbund claimed that, while other statewide officeholders complied with identical requests, Mandel's office denied its bid for records as overly broad and voluminous, constituting illegal interference with the office's work.

Joseph Mismas, Plunderbund's managing editor, expressed satisfaction with the settlement.

"We understand not every Ohioan has the time, knowledge or resources to pursue legal remedies when confronted with a stubborn statewide officeholder, so we consider this a big win for little guys," he said.

Arena board's operations will stay mostly private

From The Columbus Dispatch

The semiprivate board created to manage publicly owned Nationwide Arena says it will hold at least one public meeting per year, but it still plans to operate mostly in private as part of an agreement with Columbus and Franklin County officials.

The four board members of Columbus Arena Management, or CAM, met privately on (April 10) for the first time to sign the

operating policy, 10 months after canceling their initial meeting because Mayor Michael B. Coleman, county commissioners and county Prosecutor Ron O'Brien rejected their plan to meet in private.

The board agreed to hold one open meeting a year, most likely in June, to discuss and vote on Nationwide Arena's operating budget. The board also agreed to hire an accounting firm to audit the arena's finances.

Coleman said (April 11) through his spokesman that the new policy is "significant progress" compared with CAM's original desires, though he said "it falls short" of his expectations for transparency.

Until this week, attorneys for Nationwide Realty Investments and Ohio State University – two of the four entities with representatives on the board – had included language in the policy to allow future CAM board members to make the board completely private.

Coleman and county Administrator Don Brown balked at that idea, and the language was deleted.

Colleges rarely publicize names of those banned from campus

From The Columbus Dispatch

Many central Ohio colleges ban people from campus for being disruptive, disobeying rules or breaking laws, including burglary, domestic violence and even deer poaching.

Oberlin College in northeastern Ohio made national headlines last month when an activist group complained that the school's no-trespass list is so secret that some people don't know they're on it or how they got there.

Nine local schools contacted by The Dispatch said people barred from their campuses shouldn't be surprised; they're notified in person or sent a certified or hand-delivered letter.

However, that doesn't mean that the public can see all of the names on the lists.

Oberlin refused to share its list, but a nearby newspaper got the names of 323 people banned from the school from records at the Oberlin Police Department.

Of all of the schools contacted by The Dispatch, only Columbus State Community College provided the names of students who have been banned. Others said they were involved in disciplinary hearings that are protected by federal privacy laws.

State Auditor to gauge Sunshine Law compliance

From Gongwer

State Auditor Dave Yost said (March 11) he would conduct a test of sorts for Sunshine Law compliance throughout the state, with reviews of 20 counties and cities.

Yost said in a news release that the review, timed to coincide with Sunshine Week, will fulfill a promise he made last year to audit public records compliance during the 2012 audit cycle.

"These records belong to the people, and our governments know the right way to make them available," Mr. Yost said. "This week will be a good test to see how well we're doing."

Yost said his local government examination is based on a 2011 bulletin he issued titled "Best Practices for Responding to Public Records Requests-Updated."

"The audit will analyze procedures to determine if each entity has controls to ensure compliance with the Ohio Public Records Act. Auditors from eight regions will each examine two or three cities or counties," his office reported.

Blog sues for records of threats against Kasich

From The Columbus Dispatch

The liberal-leaning blog Plunderbund is pushing back against state claims that investigations of threats against Ohio Gov. John Kasich are not public records.

Plunderbund Media filed a complaint with the Ohio Supreme Court on (April 12) seeking the release of records it contends are being illegally withheld by Department of Public Safety Director Thomas P. Charles.

On Aug. 14, Plunderbund managing editor Joseph Mismas says he filed a public-records request seeking copies of State Highway Patrol investigative files involving threats against Kasich or his staff.

Public safety officials declined to release a word, argung the documents were exempt from release as "security records" containing information about protection of the governor, who is guarded by state troopers.

Online tool reports teacher, school employees' salaries

From The Dayton Daily News

A searchable online database of 2012 salary data for every public school employee in Ohio is now available online, thanks to a right-leaning Columbus-based think tank that published the information.

Opportunity Ohio (www.opportunityohio.org) also has on its website pay data for employees of Ohio's 600 public school districts dating back to 2004, and roughly 65,000 state government employees' pay data from 2003 through 2011.

Opportunity Ohio President Matt Mayer said the pay data isn't meant to entertain gawkers. It helps voters make more informed choices and promotes government transparency, he said.

Monroe County Auditor charging $180 a year to access online records

From The Columbus Dispatch

Monroe County Auditor Pandora Neuhart has some explaining to do. It seems she has opened herself to a big box of questions.

Her office requires those who want to view property records or sales on the auditor's website to pay a $15 monthly fee – $180 a year – to examine public records.

Problem is, it is illegal under Ohio law to charge the public to view public records, whether online or in person.

Ohio Auditor Dave Yost fired a warning letter across the bows of a few county recorders last year when his office found them illegally charging fees to access public records online.

Olentangy board member sues colleagues, alleges illegal meetings

From The Columbus Dispatch

One member of the Olentangy school board is suing the other four over a series of emails and phone calls that he says violated state public-meeting laws.

In the lawsuit, (Adam) White says the other board members held an illegal, private meeting to discuss district business, although he doesn't say that they met in person. Instead, he says a series of emails and phone calls constitutes a meeting as defined in Ohio law.

For elected bodies, the law says a meeting is "any prearranged discussion of the public business of the public body by a majority of its members." Public business is to be handled in public, the law says.

Open Government Editorials

Access to public records is vital, but shouldn't be abused

Editorial from The Columbus Dispatch

Two things are certain about the controversy surrounding a Westchester, N.Y. newspaper's decision to publish and map the names and addresses of everyone in three counties who holds a gun permit:

- The information is, and should be, a public record.
- Nevertheless, without any compelling reason nor any purpose that benefits the public, the Journal News was wrong – and foolish – to invade the privacy of so many people.

There's plenty of bad behavior to go around in this mess, including threats of violence which prompted the newspaper to hire armed guards temporarily. But it started with the paper's decision to publish the information. The rationale, as stated by publisher Janet Hasson, is flawed: "We felt sharing information about gun permits in our area was important in the aftermath of the Newtown shootings."

In what way is the fact that Joe Smith of 123 Maple St. has a gun permit relevant to the awful tragedy at Sandy Hook Elementary in Newtown, Conn.? Did the paper mean to suggest a connection between those presumably law-abiding gun owners and the deranged Adam Lanza's carnage? Surely it didn't, but the outrage of gun owners and those who feel strongly about gun rights is understandable. And what the paper did mean to convey is impossible to discern.

Even staunch defenders of the public's right to open records have criticized the newspaper's decision. As Al Tompkins, senior faculty for broadcasting and online at the journalism think tank Poynter Institute, argued in a Dec. 27 post, journalists regularly and rightly use public records to invade people's privacy – when it legitimately serves the public good.

If the Journal News had compared the list of gun-permit holders to a database of felony offenders and found that permits were given to felons, or if it found that those with personal or political connections were given special access to permits, that would have justified naming some permit holders. If analysis showed a meaningful connection between gun-ownership rates and high or low crime, that could justify mapping the locations of permit holders, though their names would be irrelevant.

The newspaper's move is not only misguided but foolish, because of the predictable backlash it has triggered. A New York state senator is calling for legislation to limit public access to gun-permit information.

That's a bad idea: Without records of what government does, the public can't assess the legality, ethics or efficiency of government action. In the case of gun permits, open records are the only way to be sure officials aren't granting them to people who shouldn't have them or denying them to people who should.

Ohio's public-records law repeatedly has been weakened by the powerful gun lobby; it allows concealed-carry permit information to be shared with journalists but not the public, and forbids any duplicating or even taking of notes, making it virtually impossible to analyze and detect problems.

Fair and responsible regulation of firearms is too important to be exempt from public scrutiny, and honoring the general principle of open records is all-important to democracy. That's why Putnam County (N.Y.) Clerk Dennis Sant is way out of bounds to announce he won't honor the Journal News' latest freedom-of-information request, declaring, "There is the rule of law, and there is right and wrong."

He needed to stop after the first part. While it would be unwise for the newspaper to publish more handgun-permit information without good cause, Sant is obligated to follow the law. Open-records laws exist for very good reason. But as with any powerful tool, they should be used with care and common sense.

Ruling strikes blow against secrecy

Editorial from The Canton Repository

The issue: Ohio's open-meeting laws
Our view: 'Attorney-client privilege' doesn't give school board carte blanche

Thanks to a Franklin County court magistrate's decision (in February), public boards in Ohio may be less tempted to try to dodge the state's open meetings law.

This is good news for all of us who want to know how local school boards, city councils and other public bodies do business on our behalf.

Here's the backstory:

Columbus City Schools is in hot water with the state for changing enrollment figures to make its students' achievement test scores look better on the district's report card. Under state law, the board can meet privately with its attorney if it faces "pending or imminent court action." But the Columbus district doesn't face a lawsuit, so it can't use that exemption to the open meetings law.

Even so, last year as the "scrubbing" scandal unfolded, board members closed seven meetings to talk with their attorney. He had claimed that any time he's in the room with them, the meeting can be closed to preserve attorney-client privilege.

Wow. Just imagine the possibilities for shutting you out of a meeting. All a public board would have to do is pay a lawyer to sit in.

The Columbus Dispatch protested the closings and sued the board. This week, Franklin County Common Pleas Magistrate Tim McCarthy issued a preliminary injunction that bars the board from closing meetings under the "attorney-client privilege" rationale.

Boards have any number of reasons for wanting to meet in secret. They may want to get their ducks in a row. They may want to duck questions. They may feel defensive or profoundly uncomfortable about discussing high-stakes situations in an open meeting. Too bad. State law gives them only five exceptions to the open-meetings rule, and in this case, the law comes down squarely against secrecy.

Thanks, Magistrate McCarthy, for the additional weight your injunction gives to this protection for the public.

Right to know is under attack, bit by bit

Editorial from The Cincinnati Enquirer

Open, transparent government is a foundation of democracy.

But the foundation is slowly being chipped away in Ohio. Little by little, nick by nick, state leaders are chipping away Ohio's Open Records Law, the law that allows the public to know what their government is up to.

Taken individually, these exemptions to our right to know might seem insignificant. Taken together, they represent a piecemeal attack on open government that deserves attention from anyone concerned about the quality and fairness of government.

Over the years, Ohio's Open Records Law was weighed down with so many exemptions that, in keeping track of them, they've lapped the alphabet and are now on (cc). That's 29 exemptions. As The Enquirer's Paul Kostyu reported, the just-ended legislative session saw at least 44 bills related to open records, most of them restricting access.

More are expected in the upcoming session. Some legislators and public officials are saying they see a trend of political opponents using public records requests as tools of harassment. With that as their cover, they're contemplating further restrictions on the public's access to records, ostensibly to ward off "harassment" of public officials.

It may be true that, in some cases, repeated requests for public records may be used as a form of political harassment. But that doesn't warrant restricting access to the general public. That kind of a "fix" would be worse than the "problem" they're trying to cure.

It's also questionable how much of a problem this really is. "This seems to be one of those 'accepted' truths that has taken on a life of its own," says Enquirer attorney and open records expert Jack Greiner. "This 'harassment' stuff is a solution in search of a problem."

It's also part of the territory of an elected or appointed public official. They are doing the public's business now, and the public has the right to know how that business is being conducted. "That's part of the job you signed up for," says Monica Dias, a public records expert with Cincinnati's Frost Brown Todd law firm. "There is no 'harassment' in public-records land."

Both these experts point out that remedies already exist to deal with serial public records requesters that truly intend to harass. Ohio already has a "vexatious litigator" law on the books to deal with the rare instances of people who abuse their access to the courts by filing harassment lawsuits. "If someone is a repeat offender, use this tool to address that problem," Greiner says.

Kentucky law allows an agency to refuse to disclose records if the request "places an unreasonable burden" on the agency. That burden, however, must be proven "by clear and convincing evidence."

Maintaining and producing public records is simply one of the jobs of our public agencies. These records belong to the public, not to the agency that maintains them on behalf of the public. That concept was first articulated more than 100 years ago by a Cincinnati judge.

"Public records are the people's records," wrote Judge Rufus B. Smith. "The officials in whose custody they happen to be are mere trustees for the people."

With that in mind, we'll be watching our state legislatures this year for any attempts to further restrict access to the people's records. We'll let you know when those bills come up and how your representatives voted on them. And we encourage you to let them know how you feel about restricting access to public information by contacting them. In Ohio, you may contact your representative by going to www.legislature.state.oh.us. In Kentucky, you can go to www.lrc.ky.gov/legislators.htm.

The more everyone knows about Sunshine, the better

Editorial from The Vindicator

It was encouraging to see a number of veteran public officials attend a three-hour seminar held by Ohio Attorney General Mike DeWine's office in Youngstown (in April).

There were a few private citizens there, too, but not enough. Because while the press does its best to hold government officials to account when they operate or try to operate behind closed doors, an informed and vigilant public can be just as effective.

It's one thing for an official to disagree with a reporter over whether or not the state's Sunshine Law applies to a specific situation. It's a little different if the challenge comes from a voter, or five voters or 20 voters on whom that official must rely for support.

Those attending the session this week at the Newport Branch of the library in Youngstown heard Jeff Clark, principal assistant attorney general, say that when it comes to legitimate record requests, it's easier to comply than fight. And it's cheaper, too, because Ohio law allows citizens to sue for damages and recover legal fees when elected or public officials flout the law.

DeWine continues a tradition of Ohio attorneys general in attempting to educate public officials and the public about the state's Sunshine laws, a body of law that has evolved over the last 40 years to cover public meetings and open records.

Anyone eager to educate themselves on the law can go to the attorney general's website. The office periodically updates its "Sunshine Laws Manual or "Yellow Book," which explains the law in layman's terms and answers questions. It can be easily downloaded.

The office also created a model open records policy that local governments can adopt or use as a guide for their own open records policies.

State law now requires every elected official to attend a Sunshine seminar during his or her term. If they comply and if the entity has adopted a Sunshine policy, there is no legitimate reason to run afoul of the law.

Unfortunately, too many elected officials continue to view what should be public records as their property and believe that they can meet to discuss business outside of the public eye.

Clark advised elected officials in Youngstown to "go above and beyond" what they may think is their duty in complying with open government requests.

That's another way of saying what has been Ohio law for more than 40 years. The preamble to the state's Sunshine law says specifically that it should be "liberally construed" toward openness. In other words, when in doubt, err on the side of being open. Those public officials who choose to err on the side of keeping the public in the dark are, to mix metaphors, playing with fire.

Open Government Editorials

Republicans double down to hide JobsOhio from public

Editorial from The Vindicator

You know the Republican majority in the Ohio General Assembly, with the full backing of Republican Gov. John Kasich, are up to no good when they push through a measure so quickly that not even the officeholder directly affected by it is given a chance to testify. And to add insult to injury, the officeholder is a Republican.

Last week, the House and Senate added an amendment to an innocuous bill that says the state wholesale liquor profits are private when they are used by JobsOhio, the so-called private economic development agency created by Kasich and his Republican allies in Columbus.

What's at stake? At least $100 million. The money is generated from the sale of bonds backed by the profits from the state's monopoly on liquor sales. JobsOhio will use the annual revenue to award grants and loans for economic development projects and fund a state program that pays for the cleanup and redevelopment of commercial and industrial sites.

Yet, Kasich and his cohorts in the General Assembly insist that it's nobody's business how JobsOhio spends the money. It especially isn't any concern of Ohio Auditor David Yost, a Republican who has gone to the mat with the governor over the need for full transparency with regard to the development agency's operation.

Leaders Throw Yost to the Side

Yost has obviously become an irritant and isn't being a good party foot soldier, so the GOP majority in the Legislature has neutered him by pushing through the amendment. The message to Yost is clear: Back off. What JobsOhio does with $100 million is outside your realm of responsibilities as the state auditor.

Who will audit the books? A private firm appointed by the auditor and JobsOhio.

To understand just how committed the governor and his GOP colleagues are to keeping the public in the dark about JobsOhio, consider this comment from Kasich about the amendment as reported by the Columbus Dispatch:

"Number one, it says what we intended it to say, which is the liquor money is private money. JobsOhio is a private organization. And that's most important."

Translation: I am the decider when it comes to determining what's private and what's public.

Kasich and Republicans in the General Assembly are going down a dangerous path of governance.

State Auditor Yost must not give up the fight for transparency.

Get Attorney General Involved

Indeed, this is an issue that Ohio Attorney General Mike DeWine should delve into, given his strong commitment to the state's public records and open meetings laws. DeWine, a Republican, has long championed transparency in government and has continued a tradition of Ohio attorneys general in attempting to educate public officials and the public about the state's Sunshine laws. Those are a body of law that has evolved over the last 40 years to cover public meetings and open records.

It seems to us that the governor and Republicans in the General Assembly are in need of a refresher course.

Meanwhile, we would urge DeWine, as the state's chief lawyer, to review what has transpired with the JobsOhio amendment and to let the people of Ohio know whether the distinction being made between private money and public money is legitimate.

ONA, OCOG help improve guidelines for school seclusion rooms

By Dennis Hetzel, OCOG President

The Columbus Dispatch has done some exceptional reporting on the use of seclusion rooms to discipline students or handle other student situations in Ohio schools and the lack of accountability or guidelines.

In response, the state Board of Education adopted first-ever rules for how schools should make use of these rooms and report on their use. Unfortunately, as drafted, the rules could lead many school superintendents to conclude that all records would be confidential. This is particularly ironic because it was the use of records that helped The Dispatch disclose questionable practices.

After the Dispatch raised the issue in stories and editorials, I wrote a letter on behalf of both ONA and the Ohio Coalition for Open Government urging the Ohio Dept. of Education and the state board to adopt rules that make it clear that these records should be open. We pointed out that redaction, not complete closure, is the answer when redaction will prevent identification of students as prohibited by federal FERPA guidelines.

FERPA (the Family Educational Rights and Privacy Act) is turning out to be the new HIPAA as an excuse for public officials to block access to information, but that's a larger topic for another day.

As a result of our efforts, the state board removed the word "confidential" from the opening sentence of the new guidelines. That change, combined with the attention the access issue has received, may help avoid denials or expensive court battles. The ODE did not respond to our suggestion that districts create a log of seclusion room activity that would be a public record.

Unless indicated, all articles excerpted from state and national news sources. For links to the complete articles, go to www.ohionews.org/category/ocog.

Supreme Court says states can restrict access to records

From USA Today

States may have little reason to restrict public records access to their own residents, but the practice is not unconstitutional, the Supreme Court ruled (April 29).

The unanimous decision, allowing Virginia to favor its residents under its Freedom of Information Act, goes against media organizations and professional data miners that had sided with the law's out-of-state challengers.

During oral arguments in February, several justices had questioned whether the state's law served any purpose, since non-residents can hire residents to get information. In his ruling, Justice Samuel Alito noted much of the data is available on the Internet.

Still, Alito said, the state law "did not abridge any constitutionally protected privilege or immunity" because access to public records is not a "fundamental" privilege, such as employment.

While the Constitution's privileges and immunities clause "forbids a state from intentionally giving its own citizens a competitive advantage in business or employment, the clause does not require that a state tailor its every action to avoid any incidental effect on out-of-state tradesmen," Alito said.

Reporters Committee asks DOJ to overturn new Marshals Service policy blocking release of federal mug shots

From the Reporters Committee for Freedom of the Press

The Reporters Committee for Freedom of the Press, joined by 37 media organizations, has written to U.S. Attorney General Eric H. Holder Jr., asking that a recently enacted Marshals Service policy to block the release of federal criminal booking photographs be rescinded.

"The new policy stifles the public's lawful access to booking photographs under FOIA without legal justification," according to the Reporters Committee letter.

The Reporters Committee letter was prompted by a Dec. 12 Marshals Service memo stating that it would no longer comply with Freedom of Information Act requests for booking photographs as required under appellate court precedent in the U.S. Court of Appeals in Cincinnati (Sixth Circuit).

Under the 1996 ruling in Detroit Free Press v. Department of Justice, federal booking photographs must be released under FOIA when a named, indicted criminal suspect has appeared in open court and the court proceedings are ongoing. The Sixth Circuit ruling found that under such circumstances an individual has no privacy right in such records. By refusing to follow the appellate court precedent, the Marshals Service has essentially shut off access to federal mug shots under FOIA.

The Marshals Service had previously limited release of booking photographs to FOIA requests originating from within the Sixth Circuit and only allowed their release to non-Sixth Circuit requesters if the images had already been made public under FOIA. The December memo states that the Marshals Service will no longer comply with its FOIA obligations under the Detroit Free Press decision particularly in light of two subsequent U.S. appellate courts decisions finding that subjects may have some level of privacy under FOIA in their booking photograph images.

It's not a crime to record cops, Supreme Court decides

From The Chicago Tribune

The U.S. Supreme Court on (May 26) declined to hear an appeal of a controversial Illinois law prohibiting people from recording police officers on the job.

By passing on the issue, the justices left in place a federal appeals court ruling that found that the state's anti-eavesdropping law violates free-speech rights when used against people who audiotape police officers.

Illinois' eavesdropping law is one of the harshest in the country, making audio recording of a law enforcement officer – even while on duty and in public – a felony punishable by up to 15 years in prison.

Feds deny request to look at Father Sam records

From The Akron Beacon Journal

The U.S. Department of Justice has denied a public records request by the Akron Beacon Journal to review court and investigatory records regarding the arrest and conviction of the Rev. Samuel Ciccolini.

The release of the records "would result in an unwarranted invasion of personal privacy and would be in violation of the Privacy Act," the department wrote in a letter dated March 8.

The letter goes on to say that court records are available to the public and another request could be filed to see those.

The newspaper had sought last year to examine the records through the U.S. Attorney's Office in Cleveland, but was later instructed to file a Freedom of Information Act request through the Department of Justice in Washington, D.C.

The newspaper is appealing the March 8 denial.

Ciccolini, a well-known Catholic priest from Akron, is serving a six-month sentence in federal prison for cheating on his taxes and committing banking fraud in 2003. He also embezzled $1.28 million from the Interval Brotherhood Home Foundation, but paid it back when he was being investigated and was never charged with theft.

Ohio Coalition for Open Government

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

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

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

OCOG is funded by contributions from The Ohio Newspapers Foundation and other outside sources. It's 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.

Donations to OCOG

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

"We haven't scratched the surface of OCOG's potential to reach out and educate more citizens on the importance of open government," says Dennis Hetzel, ONA executive director and OCOG president. "I'm particularly intrigued about how we might use social media to educate, provide resource material and build coalitions. Unfortunately, OCOG's present resources will not keep pace with current needs, let along expansion of our efforts. So please consider donating to OCOG."

Donations to OCOG can be mailed to the address above. You can also submit donations online at www.ohionews.org/legislative/open-government.

Open Government Report subscriptions and news items

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

You can also access continually updated OCOG information on the web at www.ohionews.org/category/ocog.

If you have news or information relevant to OCOG, please email it to Jason Sanford at the address at left.

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.ohionews.org/legislative/open-government.