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## **See Public Records? Governments Are Making It Harder.**

**A growing number of states are limiting access to them.**

The Holy Grail for government transparency is making it easy and simple for citizens to know what their government is doing and how it arrives at its decisions. We've always believed this can be achieved, in part, by providing access to public records.

Of course, transparency isn't open-ended. Every state has statutes clarifying what information must be made public and what information should be kept sealed. However, in recent years there's been a steady chipping away at the public's right to know. "This is a trend," says Barbara Petersen, president of the First Amendment Foundation, a Florida nonprofit that advocates for the public's right to oversee its government. "It's not just coming through legislation, but also through the agencies."

In Kentucky, for instance, the attorney general's office decided two years ago that government information transmitted through personally owned devices is immune from public scrutiny. In other words, if two council members sent emails back and forth using their own cellphones, the public would have no right to see those emails, no matter how much impact the conversation in them might have on a council decision. "If discussion about a dispute was conducted on these private devices," says Amye Bensenhaver, director of the Bluegrass Institute's Center for Open Government, "then when it came to the public meeting, everything could have already been worked out."

Even Florida, long known for its open public records law, has begun pulling back. The last time a systematic count was taken, the state had allowed for over 1,100 exemptions in which information could be concealed from the press and public.

What's more, although the state's law is expansive, there is no straightforward way to make sure it is implemented. "We're really stuck," says Petersen. "We've got this great law, but no means to enforce it other than through the courts."

Another burgeoning threat to the utility of public records laws is the exemption of legislative documents, a step such states as Iowa, Massachusetts and Oklahoma have taken. The state of Washington came close to enacting just such a bill, but the governor vetoed it and no attempt was made to override the veto thanks to a loud and effective outcry from the press.

There's another hitch to openness. Many records that would ordinarily be made public escape examination when the organization that maintains them is not a direct part of government. That is, the records have been transferred to a nonprofit or for-profit organization, both of which may not have to comply with freedom of information laws. "This is an issue that every city and state should be aware of in their procurement," says Alex Howard, deputy director of the Sunlight Foundation, which advocates for transparency. "They should make sure the public's right to know isn't being lost."

These disclosure issues can wind up in the courts, where opinions have varied across the states,

according to Adam Marshall, an attorney at the Reporters Committee for Freedom of the Press. Some of the factors the courts might take into account include how much funding the entity receives from the city or state, the functions it performs and the degree to which the government controls what the private entity does.

Another barrier to access exists when a state or locality charges high fees for providing information. For example, in Florida, Charlotte County approved one-sixth the number of requests for information that Polk County did, yet it collected three times the amount of money, according to the University of Florida and the First Amendment Foundation. The reason: Charlotte charged \$50 for every request, no matter how small; Polk, \$10 per request.

Clearly, in the best of all worlds, when a citizen is turned down on a request for public information, she should be able to seek out people who can help. But states and localities don't always publish their public record stewards' names. According to a Florida audit, "there's a substantial absence of so-called public report custodians in the state." The audit found that 10 percent of the agencies it surveyed did not have a designated public records custodian; 10 percent didn't have the custodian contact information on their website; and 1 in 5 said the information was online, but independent auditors could not find it.

Technology is becoming a means to effective gathering and analysis of data that can be used to guide management efforts. So, it's ironic and counterproductive that it's increasingly difficult for the public to get to the actual data. "This is becoming a bigger problem," says Daniel Bevarly, executive director of the National Freedom of Information Coalition. "The public sector is lagging behind the preferences of the people they represent."

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