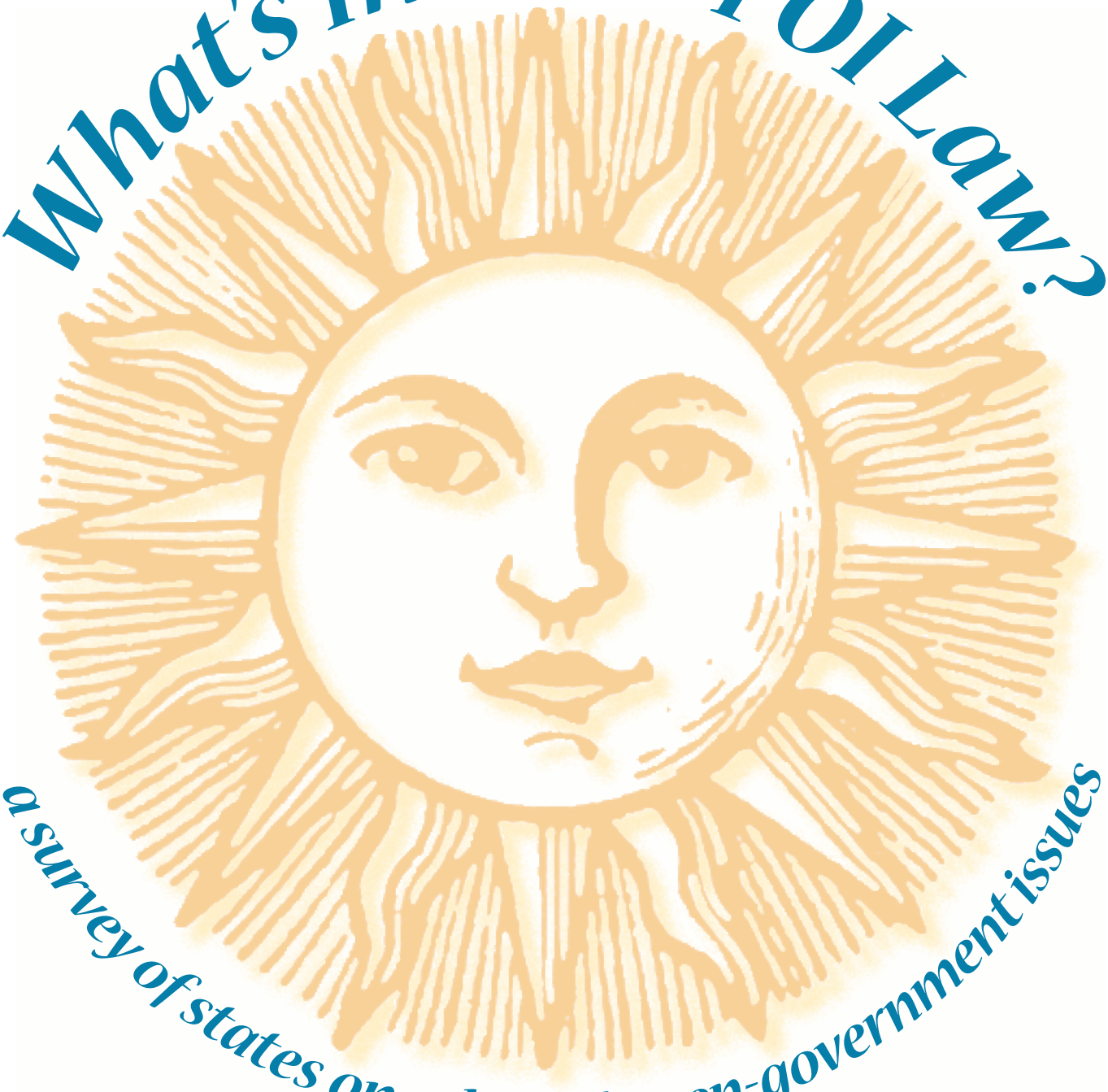
What's In Your FOI Law?



a survey of states on selected open-government issues

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VIRGINIA COALITION FOR OPEN GOVERNMENT

BOARD OF DIRECTORS

We are a nonprofit alliance formed to promote expanded access to government records, meetings and other proceedings at the state and local level. Our efforts are focused solely on local/state information access. While we do some lobbying (within limits imposed by IRS rules), our primary work is educational. The Coalition was formed in 1996. Our 23-member board represents the state's access activists and friends of open government, from librarians, genealogists and broadcasters, to newspapers and the public at large.

In August 2006, the Virginia Coalition for Open Government sent out surveys to all states that had either a public-interest organization similar to VCOG, a statewide government public-information office(r) or both. Sixteen states responded, some with answers so detailed that it is a shame they can't be included here in full. Many of their responses have been edited and/or paraphrased in the interest of space.

Each respondent's full response will be posted on our Web site (www.opengovva.org), as will a copy of this report.

We extend our most hearty thanks to all respondents listed below and hope that readers will learn something about how some FOI-related battles are universal and others are unique to each state.

— Forrest M. "Frosty" Landon, Executive Director
— Megan H. Rhyne, Associate Director

Tom Hennick, Connecticut Freedom of Information Commission

Barbara Petersen, Florida First Amendment Foundation

Betsy Russell, Idahoans for Openness in Government

Marian Pearcy, Indiana Coalition for Open Government

Jim Lee, Maryland Foundation for Open Government

Karla de Steuben, Massachusetts Campaign for Open Government, a project of Common Cause Massachusetts

Katie Engler, Minnesota Department of Administration, Information Policy Analysis Division

Guy Baehr and **Beth Mason**, New Jersey Foundation for Open Government

Bob Johnson, New Mexico Foundation for Open Government

Robert Freeman, New York Committee on Open Government

Brian Walke, FOI Oklahoma Inc.

Gayle Sproul, Pennsylvania FOI Coalition

Bill Rogers, South Carolina Press Association

Frank Gibson, Tennessee Coalition for Open Government

Maria Everett, Virginia Freedom of Information Advisory Council (some answers provided or supplemented by Frosty Landon, Virginia Coalition for Open Government)

Greg Overstreet, Washington Attorney General's ombudsman

What are the greatest strengths of your state's public-access law?

Connecticut

The law establishes an independent, autonomous commission that rules on FOI complaints, which has the power to hold hearings and issue subpoenas; the power to order the disclosure of public records, declare null and void actions taken at meetings, and impose civil penalties up to $1,000 for violations without reasonable grounds; and can issue binding rulings that can only be overturned by a court. Failure to comply with a commission ruling is a misdemeanor The law grants public access to public meetings and records to all citizens.

Florida

A constitutional amendment guaranteeing the right of access to records. The amendment includes a standard all proposed exemptions must meet. Plus, all three branches of government are subject to the law. All records are considered public record open to inspection and any discussion by two or more members of the same board or commission of public business (defined as anything that may come before them in their official capacity as a board member) is a public meeting absent a specific statutory exemption

Idaho

(1) All records are presumed open unless specifically exempted from the public records law; (2) record requests must be responded to in most cases within three working days, though it can be up to 10 if it takes time to locate the records; and (3) the open meeting law contains an excellent preamble clearly stating the importance of openness: "The people of the state of Idaho in creating the instruments of government that serve them, do not yield their sovereignty to the agencies so created. Therefore, the Legislature finds and declares that it is the policy of this state that the formation of public policy is public business and shall not be conducted in secret."

Indiana

(1) Presumption of openness and access in Open Door Law and Access to Public Records Act that requires public agencies to cite statutory authority to close a meeting or deny access to a record; (2) the Office of the Public Access Counselor receives complaints about access abuses and issues opinions, which is a requirement prior to suit in order to collect reasonable attorney fees and court costs; and (3) lack of "unwarranted invasion of privacy" provision in state access law, which is a provision that has been much abused under the federal FOI Act.

Maryland

The Open Meetings Compliance Board, where complaints can be filed against public bodies, though it has no enforcement authority.

Massachusetts

(1) The fact that it exists; (2) the Division of Public Records, which has a legal staff to answer questions; and (3) records custodians must respond within 10 days.

Minnesota

Data are presumptively open. "We have a combined access and privacy law so both interests are considered when decisions are made. We have also implemented the Fair Information Practice Principles, which limits the personal data the government can collect and gives individuals a mechanism to correct data collected on them."

New Jersey

(1) It covers all records (printed and electronic) unless there is a specified exemption; (2) it allows all persons to make requests and requires a formal response within seven business days; denials must be in writing and cite specific legal grounds; and (3) it allows appeals to be made either directly to the courts, with legal costs recoverable if the appeal is successful, or at no cost to a Government Records Council which has the power to order records released and to impose fines when government officials knowingly and willfully violate the law.

For the open meetings law: (1) Any person may attend any meeting of a public body, with only 10 exceptions; (2) agendas must be specific, and must be available to the public at least 24 hours before the meeting. No action may be taken on subjects not on the agenda; and (3) an action not taken in compliance with the act is invalid. For open records: (1) Every person has a right to inspect any public record; (2) there are only 10 exceptions, unless otherwise provided by law; (3) the law provides for both criminal and civil penalties for violations; (4) providing public records is an integral part of the routine duties of public officers and employees, so public bodies cannot charge for finding records or determining whether they are public; and (5) a broad definition covers all manner of records, "regardless of physical form or characteristics."	New Mexico
(1) The definition of "record" includes any information in any physical form kept, held, produced by, with or for an agency of state or local government; (2) improved time limits for responding coupled with possibility of award of attorneys' fees when agencies stonewall or fail to comply with time limits; and (3) services provided by Committee on Open Government, created as part of Freedom of Information Law in 1974, which has remained free of political influence.	New York
Its preamble sets down the spirit of the law, which should help to clarify the purpose and possibly, when there's confusion, clarify what kinds of records should be released and why. The law's definition of what a "public body" is and what a "public record" is were both important provisions in the law because many publicly funded offices would simply say the law did not apply to them. The law also requires that offices have someone available at a set location, during routine business hours, or during modified business hours, for offices that are only open short periods through the week. Also, they have to have a specific person in charge of handling records.	Oklahoma
"Our law has few strengths, as it is one of the most restrictive in the country. On the plus side it has relatively short response times, permits appeals of 'deemed' denials and permits redaction of records that would otherwise be withheld."	Pennsylvania
Open financial records; open recruitment records; notice and openness sessions.	South Carolina
(1) The law allows for speedy show-cause hearings in court if record is denied and no valid reason given for denial; (2) under open meetings law, two members of a governing body cannot discuss public business if it is to deliberate and "circumvent" the chance meeting provision of the law. Being seen together in public is a "chance" meeting and not covered; and (3) the Tennessee Supreme Court found the rights of access and open government are inherent in the free speech and free press clause of our state constitution.	Tennessee
(1) It has construction rules and a pretty clear policy statement to help resolve ambiguities; (2) the presumption of openness; and (3) FOIA petitions don't cost much and don't usually require lawyers since the burden of proof is on the government. [ME] The existence of the FOI Advisory Council, which is not only a good resource for the public, press and government, but whose study-commission function has led to increased communication among stakeholders and, consequently, better thought-out FOIA policy. [FML]	Virginia
(1) There are numerous specific statutory exemptions from disclosure instead of a few broad vague exemptions (as in the federal FOIA), which leads to judges making things up based on "reasonableness"; (2) the burden is on agency to prove record can be withheld; (3) expedited judicial proceeding to obtain records; and (4) attorneys' fees and penalties are awarded to the requestor if he or she wins in court.	Washington

What are the greatest weaknesses of your state's public-access law?

Connecticut

"The law has many exemptions to disclosure that have been added in the 30 years the law has been existence. The process for creating an exemption allows unnecessary restriction to access to occur too easily. Although the FOI commission issues binding rulings, the accompanying penalties are not stringent enough. Agencies weigh the cost of non-compliance and often choose non-compliance over penalties to avoid disclosure when convenient. The FOIC lacks the ability to pursue violators of the access law without a formal complaint from a citizen. Someone could offer a 'tip' about violations, but the FOIC can only act when a complaint is filed."

Florida

"Enforcement is the greatest weakness of Florida's open government laws: essentially, it's up to the people to enforce what is a constitutional right. Also, I think the penalty provisions could be strengthened. I'd like to see damages allowed for an intentional violation of the law. Although a successful complainant will be awarded attorneys' fees and court costs, suing government can be daunting at best. One other weakness is the lack of required open government education/training for all government employees and officials."

Idaho

(1) New exemptions are added to the public records law every year and there are currently far too many; (2) many agencies incorrectly treat exemptions as mandates to keep information confidential; and (3) exemptions to both the public records law and the open meeting law are much too broadly interpreted by agencies.

Indiana

(1) No criminal or civil penalties for public officials or employees who purposely violate state's access laws; (2) lack of finite time period in which to produce records requested; and (3) no mandatory training for elected officials on access laws.

Maryland

(1) No ombudsman for record-denial disputes; (2) no firm wording on release of databases (now agencies often use the excuse that it will cost thousands of dollars, even though it generally doesn't, as an excuse to not release a database of information); and (3) vagueness in some of the guidelines that make it easy for public bodies to deny access to meetings or information.

Massachusetts

(1) The public and some local officials' apparent lack of awareness of the requirements of the law. There is no provision in the law requiring periodic training about the law; (2) the lack of effective penalties if the law is violated, even if it is violated willfully; (3) the lack of any adequate record-keeping on violations; (4) the fact that the Public Records Division has to rely on the Attorney General to enforce its decisions when the Pubic Records Law has been violated.

Minnesota

(1) The enforcement mechanism is civil litigation by the individual, which is too costly for most; (2) the primary law is long and complicated, and not all provisions are found in the primary law; and (3) there is no real incentive for the government to comply with the law and provide access or provide appropriate privacy protections.

(1) New exemptions can be imposed by either house of the state legislature or by the governor by executive order; (2) Government Records Council has proven to be largely ineffective. Cases take longer to resolve than if you go to court and decisions tend to be less friendly to open government. In four years of operation it has never fined a custodian for violating the law; (3) the effectively law sets allowable copying costs well above actual costs and is a significant burden for requesters; and (4) correspondence between legislators and constituents, including corporate constituents, is exempt, as are criminal investigative files, even after the investigation is closed.	New Jersey
For open meetings: (1) Legislative conference committees are not required to be open; (2) no written records of executive sessions, even for in camera review by a judge; and (3) no civil penalties for violations. For open records: (1) A public body has 15 calendar days before a record may be deemed denied; (2) requirements for releasing law enforcement records are vague and often distorted by police agencies; and (3) a separate statute covering databases includes unconstitutional provisions allowing state departments to set "royalty," determine how database may be used and restrict distribution by recipient.	New Mexico
(1) Absence of enforcement authority other than court; (2) absence of penalty for noncompliance; and (3) various subsets of (1) and (2).	New York
"Probably the biggest weakness is in the lack of enforcement. Secondly, it is too easily amended. Lastly, public officials remain relatively ignorant of the Open Records Act and its purpose."	Oklahoma
(1) The burden of proof is on the requester; there no presumption that a record is public; (2) very limited definition of public record and very limited construction of same by courts; (3) lack of mechanisms for quick judicial review; and (4) the language used permits the possibility of charging excessive fees.	Pennsylvania
(1) A 15-day delay; (2) unclear wording on job finalists; and (3) abuse of executive sessions (we are attempting to require sworn affidavits, as Georgia does).	South Carolina
(1) There are no uniform procedures spelled for denying a public records request; (2) the only avenue of appeal after denial of a records request is to go to court and seek judicial review. Even then, there is no guarantee a citizen's legal fees will be reimbursed if she wins the suit. Fees are left to judicial discretion and judges are not inclined to award fees against local and fellow elected officials; (3) no one is responsible for ensuring compliance with the law and there are no penalties that assure personal accountability; and (4) exemptions are added by a simple majority and there are no sunset provisions.	Tennessee
Venue for filing a court provision. Citizens rarely prevail because of familiarity between the judges and the local government officials. Lack of a general exemption covering Social Security numbers, bank records, and the like, of individual citizens. [ME] The act is unecessarily limited to Virginia citizens. Both ongoing and completed law enforcement investigations are exempt. One-on-one, serial ("daisy chain" meeting) exemption is abused. [FML]	Virginia
(1) There is no real penalty for non-compliance (full attorneys' fees are rarely awarded, penalties are too low to deter violations); (2) no agency to enforce act (going to court for most requestors is too expensive and time-consuming); and (3) trial court judges do not know the act or do not appreciate how important it is (they often treat public records cases like discovery disputes).	Washington

Does your state require a supermajority of the legislature to pass an exemption (or other restriction) to the public access law?

NO 

YES ☼*

* Florida

Does your state require that an exemption, exception or requirement sunset after a certain amount of time?

NO 

YES ☼*

SOMETIMES  +

* Florida has a requirement that all exemptions be reviewed and reenacted five years after original enactment. Once reenacted, the exemption is not reviewed again; if not reenacted, the exemption automatically sunsets. "We've found that five years is too short. Even with term limits, many of the same legislators who supported a bad exemption are still around five years later and it's nearly impossible to get a bad exemption sunsetted."

+ Maryland has sunsets on some new laws, but there is no requirement.

+ Minnesota has an occasional sunset provision, but nothing is automatic.

+ New York has what is described as an "insignificant and never cited" exemption that expires in 2009.

+ Oklahoma said, "Not on most."

+ Virginia has a sunset provision on its current records exemptions for certain public-private partnership records, as well as a provision allowing the University of Virginia to use a different set of rules for electronic meetings.

Does your state law limit use of the public access law to citizens of that state only?

NO ☼☼☼☼☼☼☼☼☼☼☼☼☼

YES ☂☂☂*

* Pennsylvania and Virginia have codified restrictions limiting use to citizens of the commonwealths.

* Tennessee says that sometimes record custodians rely on language that establishes the right of access to every "citizen of Tennessee" "It's a literal translation of language that was nothing more than legislative intent to codify our state constitutional protections."

(South Carolina not responding)

Citizens-only limitations: "No state is an island."

FOI laws are designed to keep citizens informed. To some states, including Virginia, just who is a "citizen" is a parochial thing. Use of Virginia's FOIA is limited to "citizens of the Commonwealth," or to representatives of the press operating in Virginia.

In case there was any question that the limitation was mere puffery, homage to the good people of the Old Dominion, the Virginia General Assembly in 2002 added a provision stating that record custodians could ask for a requester's legal name and address, just to make sure the requester really did live within state borders. (This provision also conflicts with FOIA's axiomatic principle that requesters do not have to say who they are or what they want the records for.)

Out-of-state record requesters (individuals and commercial requesters) have repeatedly contacted the Virginia FOI Advisory Council asking if this was really the law.

Yes, it is the law. To the council's credit, it has suggested to record custodians that it is probably more important to honor a request than to quibble with someone over where they live (an especially noxious detail considering Virginia's fluid relationship around the D.C. and Maryland borders, as well as the sister-like relationship between Bristol, Va., and Bristol, Tenn).

Never mind that if a custodian refused a North Carolina resident's request, there's nothing stopping that requester from asking a friend just over the border to get the same information for her.

A federal court in Philadelphia did not mention the ridiculousness of the limitation, however, when it struck down Delaware's law, which similarly limited use of the law to state citizens.

The 3rd U.S. Circuit Court of Appeals had far more serious things on its mind. It said Delaware's citizens-only limitation violated the U.S. Constitution's Privileges and Immunities Clause.

Delaware had argued that the limitation was necessary for "defining the political community" there. But the three-judge panel found "no evidence that allowing non-citizens to directly obtain information will weaken the bond between the State of Delaware and its citizens."

"No state is an island — at least in the figurative sense — and some events which take place in an individual state may be relevant to and have an impact upon policies of not only the national government but also of the states."

The 3rd Circuit only covers Delaware, New Jersey, Pennsylvania and the Virgin Islands. Here's hoping that its court ruling will inspire nearby Virginia to abandon its citizens-only limitations in the near future.

Does a public entity have to notify a records requester that the requested records do not exist or cannot be found?

NO 

YES 

+ Indiana says the basis of the denial *could* be that they do not exist, but there is no requirement that the fact be spelled out.

+ Minnesota says, "There is a statutory requirement that government data be kept so that it is 'easily accessible for convenient use.' Therefore, a government entity should not tell a requester that the data cannot be found, though there are a number of advisory opinions that indicate that a requester should be informed if data do not exist."

+ South Carolina says that if no response is made, the request must be considered *granted*.

When does "no" really mean, "I'm not going to tell you"?

Like many states, Virginia law requires a record custodian to notify a requester that a request is being denied. Maybe the full document contains exempt materials, or maybe some of the document does, and the document turned over to the requester is redacted. In any case, the custodian is to cite the exact provision in the FOI law or elsewhere in the Virginia Code justifying this withholding.

But what if the requested record does not exist? Or what if it cannot be found? Common sense tells us that a custodian would tell a requester of one of those facts.

But, as far too many record requesters learn, common sense often flies out the window when it comes to custodians in a particularly territorial mood that day.

Of the four responses Virginia law requires custodians to make to a requester (that the entire record will be released, that the entire record will be withheld, that part of the record will be withheld or that more time is needed to fill the request), "the record does not exist or cannot be found" is not one of them. So, technically, if a record does not exist or cannot be found, no response from the custodian is necessary.

More often than not, the recalcitrance of custodians results in suspicion at best, bad blood at worst. Requesters suspect that they are being ignored, while a custodian says, "Since the records didn't exist, I didn't feel like I needed to tell the requester anything else."

The Virginia Freedom of Information Advisory Council this year has undertaken a study of the so-called "fifth response." Though the workgroup studying a possible legislative fix was still studying the issue as of press time, the general premise of the proposal is to add a response that requires the custodian to say specifically, "We do not have that record, or we cannot find it."

There is some debate over whether there is a further duty to tell the requester who *does* have the record or where it *might* be. The general consensus, however, is that it's just good public policy for a record custodian to give a requester as thorough a response as possible.

Can such a response be found in Virginia? Or does it exist?

Are legal settlements between government and public employees exempt from disclosure?

YES 

NO 

* Maryland says most public bodies use the personnel exemption.

+ Florida adds that a term of the settlement cannot require the agency to withhold the agreement from disclosure.

+ Indiana: "A recent Indiana Court of Appeals decision clarified this issue. *The Banner*, a small newspaper in Knightstown, sued the town when it refused to disclose an insurance settlement made with a police dispatcher who had sued for civil rights violations. The town argued it had never received a copy of the settlement so it was not in its possession as a public record. The court ruled otherwise. The Indiana Supreme Court declined to hear the case on transfer."

+ New Mexico says public bodies often try to make non-disclosure a condition of settling, but NMFOG has been successful in taking these entities to state or federal court.

+ Oklahoma says, "There is a provision in the law which requires public bodies to maintain open records on all expenditures of funds. Though settlements are not specifically addressed, I believe this provision would cover release of settlement agreements."

+ Tennessee says they are not exempt in either statute or case law, but that some local governments nonetheless try to withhold the information until they get sued.

(Idaho not responding)

Does your state law address caps on costs or fees that may be charged to fulfill a request for records?

CONNECTICUT	To the agency producing the copies, no. To the requester, yes. Requesters are charged $.50 a page or the amount an agency spends to produce a copy of a document or recording. That cost must not include any profit to the agency.
FLORIDA	There are two fee provisions: one allows an agency to charge $.15 a page or the actual cost of duplication; the other says if a request requires an "extensive use" of agency resources, an agency may charge a "reasonable fee based on actual costs incurred."
IDAHO	There is a threshhold below which it is free, but no upper cap. There is a waiver option, too. If the request is for more than 100 pages, agencies may charge for labor plus up to the actual cost of duplication.
INDIANA	Copies of existing records are limited to actual costs (no search fee, labor or overhead costs). If copying records onto a CD or floppy disk, costs are "direct costs," which includes the agency's cost for the medium used, programming costs if required. If a citizen obtains records through a remote link via the Web, then public agencies can charge a "reasonable" fee.

Different feelings on fees

Citizens own their government, not the other way around. But when requesting public records they'd best brush up on their Latin: *caveat emptor* ("buyer beware)."

Ideally, most-requested public documents would be free to all comers (the Internet makes this increasingly possible). After all, it was taxpayers who paid for the record-keeping in the first place.

Politically, a no-fee policy is not feasible: Lawmakers generally heed record custodians' pleas and allow at least a small fee.

For massive record requests, fees may even be appropriate — especially if the records are not yet digitized and thus not easily searched, redacted and printed.

The federal Freedom of Information Act sets out specific fee provisions for four categories of requesters: (1) commercial use requesters must pay fees for document search, duplication, and review; (2) non-commercial requesters from educational or scientific institutions pay no search fees and receive 100 pages of free duplication; (3) representatives of the news media pay no search fees and receive copies of 100 pages free; (4) all other requesters receive two hours of search time and copies of 100 pages free.

In Virginia, we've steered clear of special access privileges for journalists; as a result, journalists pay the going rate for document search and copying – and government can't make arbitrary judgments about who's a "legitimate" journalist and who is not.

Because Virginia law does not permit government to ask a requester why he wants a record or what she plans to do with it, search and copying fees are the same for everybody, commercial requesters included.

Unfortunately, we don't have a provision mandating that some pages be provided free, thus leaving it to government to decide who gets a waiver and who does not. The flip side of this is that a per-page fee might discourage custodians from exercising any discretion at all.

Despite ruling after ruling, record custodians still have trouble determining "actual" costs that are "reasonable," (the terms used in the state's open records act).

"Actual" means what it really costs to run the copier. It doesn't mean overhead, hardware costs, or employee benefits.

"Reasonable" means not charging for separating public from nonpublic data (especially when the wrong stuff gets redacted!). It also means an hourly charge may not exceed the salary of the lowest paid employee with the needed skills to perform the copy request.

Some states write into statutory law a specific fee to be charged for a single page.

There's much to be said for charging a uniform fee in each branch of local and state government; the downside is that inflation may eventually make the amount unrealistic. And, in the Digital Age, does anyone really know what "a page" is?

No caps. Only vague guidelines concerning "reasonable" cost of duplicating the information.	MARYLAND
The custodian can charge the requester a reasonable fee for searching for the records requested and for copying the records. Generally, the custodian may charge no more than $.20 per page for photocopies, $.25 per page for copies from microfilm or microfiche or $.50 per page for computer printouts. Any search time charged should be based on the hourly rate of the lowest paid employee capable of filling the request. The law also sets out specific fees that can be charged for copies of certain law enforcement-related records.	MASSACHUSETTS
If a member of the public asks for public data that are not about the requester, costs can be assessed in one of two ways. If the request results in 100 or fewer pages of black and white copies on letter or legal sized paper, the maximum amount per page is $.25 (two-sided copy is maximum of $.50). If the request is for 101 pages or more, or for a medium other than black and white paper copies (large map, color copies, photographs, etc.), then the government can recover their actual costs. If the person making the request is the subject of the data, then the government entity can only recover the actual cost of making the copies (no time for searching for and retrieving the copies).	MINNESOTA
There is a cap, but it is too high for paper copies. Electronic copies can be relatively inexpensive, but if programming is necessary, "it seems there is always an additional cost with no supporting rationale."	NEW JERSEY
The law requires actual cost of copying (no search or retrieval time) not to exceed $1 per page. Most public bodies charge between $.25 and $.50 per page, or the cost of a disk for electronic records, though some insist that the $1 limit is what the law requires.	NEW MEXICO
Twenty-five cents per photocopy, or actual cost of reproducing records that cannot be photocopied. No search or administrative fees/costs may be imposed.	NEW YORK
The statute generally provides that the fees must be reasonable but has no cap, and requesters may be asked to pay fees in advance if they are over $100.	PENNSYLVANIA
The law says government can adopt reasonable rules dealing with providing copies, but various attorney general opinions say charge only for cost of copies, not cost of copying. Government can't charge to inspect, can't charge for staff time to research and fetch records. Citizens cannot force government to do research and create a new record unless willing to pay for computer run or staff time to sift through.	TENNESSEE
Actual, reasonable costs. The FOI Advisory Council has said that search time may be included in actual cost, but not overhead or employee benefits. Government can require a deposit if request will cost $200 or more. Government can withhold records if previous records request has not been paid for 30 days or more.	VIRGINIA
Copies are limited to actual costs or a default of $.15 per page.	WASHINGTON

Is there a requirement that agendas be descriptive and/or all-inclusive (meaning, they cannot be added to once set)?

Connecticut	Yes. Agendas must fairly apprise the pubic as to what the anticipated action will be at the meeting. Agendas must be filed at least 24 hours prior to the meeting and must be specific in nature.
Florida	Not really. The law requires "reasonable notice" and the Florida Supreme Court has said "reasonable" means sufficient so as to inform those who may be interested in attending. In practice, most agencies include an agenda in the public notice but our attorney general has said that an agenda is not required in the notice.
Idaho	Inclusive. Good-faith or emergency changes to an agenda are allowed.
Indiana	Agendas are not required, but if used they must be posted outside door of meeting room. Governing bodies may not approve items by referring only to the agenda number without more.
Maryland	Yes, but the requirements are vague and enforcement is minimal.
Massachusetts	No.
Minnesota	There is no statutory requirement that there be an agenda for a meeting.
New Mexico	Agendas must "include a list of specific items of business to be discussed or transacted at the meeting."
New Jersey	Yes, if for a specially called meeting; no, if it is a meeting where notice is given of all meetings to take place over the next year.
New York	No.
Oklahoma	Agendas should include "all items of business to be transacted by a public body at a meeting, including, but not limited to, any proposed executive session for the purpose of engaging in deliberations or rendering a final or intermediate decision in an individual proceeding." In the event of an executive session, the agendas are to include enough information for the public to determine why the executive session is being called and what business would be performed in that venue.
Pennsylvania	No.
South Carolina	Yes, but not very detailed.
Tennessee	No, except the courts have held that notices of special meetings must describe what will be discussed and voted upon. "We are seeing items added to agendas at regular meetings and voted on then. We're trying to deal with this is legislative study committees.
Virginia	An agenda is required, but there are no standards on what it must include, thus non-agenda items may be considered, courts have ruled.
Washington	No.

Are records required for one-on-one meetings between two members of a public body?

YES ☼*

NO, BECAUSE ONE-ON-ONE MEETINGS ARE PROHIBITED ☼☼+

DEPENDS 🌥x

NO 🌧🌧🌧🌧🌧🌧🌧🌧🌧🌧🌧🌧

* Minnesota: The "Official Records Act" requires that officials "make and preserve all records necessary to a full and accurate knowledge of their official activities." To the extent that one-on-one meetings between members of a public body fit that requirement, then records should be kept.

+ Florida and Idaho.

x Massachusetts.

Are public bodies or agencies required to keep a database or electronic index of the public records it holds?

NO 🌧🌧🌧🌧🌧🌧🌧🌧🌧🌧🌧+

YES ☼☼☼☼☼*

+ Massachusetts says no requirement at the local level; not aware of a requirement on the state level.

* Florida's law requires such an index only with respect to records maintained by court clerks.

* Maryland says public bodies are encouraged to keep such a list and, because requests for information are also public records and must be released, most do.

* Minnesota says, "There is a requirement that the government entity have a list of records that contain data on individuals, but the entity can choose in what medium to maintain the information.

* Washington state agencies must keep an index of things they cite (e.g., administrative rulings, etc.), but local governments don't.

What kind of disclosure, if any, is required during the nomination process to fill an unexpected vacancy on a public body.

Connecticut	If the nomination process is completed by a political (Democratic or Republican) committee, it is not covered by the Freedom of Information Act.
Florida	Under Florida's Open Meetings Law, any discussion of who should fill a vacancy would be open to the public.
Indiana	The Open Door Law allows a governing body in executive session to develop a list of prospective appointees, consider applications for the vacancy and make one cut of prospective employees. The governing body must identify if requested the remaining candidates after the first cut. The governing body cannot interview prospective appointees/candidates in an executive session.
Maryland	Closed sessions to talk about vacancies are allowed, although many local public bodies have opened their processes more in response to news stories and citizen concerns.
Minnesota	For state level public bodies, there is an open appointments process where individuals can express interest in being appointed. This process is administered by the Office of the Secretary of State. For local public bodies where the positions are elected, there is currently disagreement about how much data about applicants for appointment is accessible by the public. However, there is some data that are public.
New York	Judicial decision indicates that discussion regarding vacancy in elective office must be public; closed or "executive" session may be held to discuss candidates to fill appointive positions.
Oklahoma	"Though I'm not sure there is any provision for disclosure of a nomination process, we have never heard of problems in this area. Generally, this type of information is released to the public, if requested."
Pennsylvania	The Sunshine Act provides that vacancies for elected officers must be discussed in open session.
Tennessee	No disclosure is required, but a public body cannot use a secret ballot to fill vacancies.
Virginia	The Virginia Freedom of Information Advisory Council has said that interviews of prospective candidates may be held behind closed doors.
Washington	Meetings can be closed; public records on the topic are usually open.

Does your state have a separate public office to field FOI-related questions from the public, press and government?

NO 

YES 

* New Mexico (the Attorney General's office has enforcement authority, exercised only once in 30 years), Oklahoma, Pennsylvania, South Carolina, Tennessee, Washington (the AG has an ombudsman, but he has no enforcement authority).

\+ Connecticut, Florida, Indiana, Maryland (for meetings), Massachusetts, Minnesota, New Jersey (for records), New York, Virginia.

(Idaho not responding)

If your state does have such an office, does that office have the power to informally mediate FOI-related disputes.

NO 

YES 

* Indiana, Virginia, Washington.

\+ Connecticut (formal and informal), Florida, Maryland (though the Attorney General's office, through which the program is run, often has to represent the government entity), Massachusetts, Minnesota (no statutory authority, but has done informal mediation when "affected parties have been willing."), New Jersey (though it has "largely failed to do that," and the office frequently cannot be reached via its 800-number), New York.

What trends are likly to impact public access laws in the future and how might those trends be responded to?

Connecticut

The trend toward less disclosure of public records has accelerated since the attacks on this country on 9/11/01. In the name of security, many agencies have tried to withhold more records.

We have stressed and will continue to stress the need for balance between security and the public's right to know. We will need to be vigilant and point out the importance of avoiding panicked or knee-jerk reaction to situations that prompt a restriction of public access to government.

Florida

Privacy and access to electronic records. Our court has spent the last two years struggling with this issue, imposed a temporary moratorium on online access to court records and has just created more committees to study the problem further. And there's still no good definition of "privacy." Many confuse the right to privacy with the right to anonymity.

We will provide as much information and assistance as possible, by correcting misperceptions and misinformation through our work with the media, the public and the government.

Idaho

More exemptions are proposed every year.

We will fight. We have considered an overall rework, but thus far haven't seen a model that would necessarily bring more openness than the presumption of openness we have now.

Indiana

Concerns over privacy, identity theft and emerging issues with homeland security are already changing state and federal law. Also, trends in privatizing government services.

Expand coalitions on the state and national level, share resources, organize more effective grassroots campaigns for better access laws and awareness.

Maryland

One trend is individual agencies including exemption provisions when they enact new legislation. Another trend is the closing off of personal information, as has just been seen with MVA records. A third trend is closing off more court information, juries, witnesses, etc.

Our press association has been able to work closely with lawmakers to ensure that changes or exemptions are narrowly defined, as was the case to challenges to electronic court records.

Massachusetts

The increasing use of the Internet by the public to obtain information and the use of the Internet by public officials to communicate and conduct public business.

The Massachusetts Campaign for Open Government's main focus in the coming year will be to try to get local governments to post all of their key governance records online.

Minnesota

How technology is implemented and whether systems and databases are designed to provide access to government information and protect privacy. Also, the rise of large, commercial databases built using government data will be an issue, which affects society and how we conduct business, as well as individuals and their privacy.

It will be very dependent on the resources available to the Information Policy Analysis Division.

New Mexico

The state will try to restrict access to electronic records and turn them into a profit center.

We have already defeated two attempts to do this, and we will respond to any further attempts.

New Jersey

Terrorism issues will continue to be raised as an excuse to close records or deny requests.

We have mobilized those affected by these proposals by arguing that most proposals have been far too broad. "I think the widespread distrust of government and the obvious interest of corrupt politicians in using terror rules to keep their dirty-doings secret has helped keep these proposals from gaining more traction."

New York

The attitude of a new governor. Electronic information issues. Overreactive relative to privacy/secruity issues and failure to abide by the "Aretha Franklin Principle": "You Better Think!"

Educate government officials, news media and public. Speak publicly regarding failures to comply with law. Successfully implement new legislation requiring agencies to accept requests and transmit records sought via e-mail when they have the ability to do so.

Oklahoma

The War on Terror has given government an almost free hand in restricting access to many records, and places a greater responsibility on journalists and citizens to explain why documents should be made public. Another threat comes from conflicts with privacy laws, which often seem to be trumping public interest.

Try to be more aggressive in our efforts to keep on top of proposed changes and argue whenever appropriate for greater openness.

Pennsylvania

The language of the law is so restrictive that major amendments to the law are the only effective means of changing the current state of closure.

We will support and encourage all citizens of Pennsylvania to create a government that is more open to them. We hope to do this by educational programs, assistance with right-to-know requests and discussion with community leaders.

South Carolina

(1) Tight budgets mean agencies want to charge more; and (2) privacy concerns.

Legislative vigilence and education.

At its June 2006 retreat, the Virginia Coalition for Open Government Board of Directors found seven trends to monitor in the coming years.

1. increasingly unsympathetic legal environment in local, state and federal courts;
2. security;
3. privacy;
4. public apathy;
5. fractionalization of media;
6. political dominance by any one party; and
7. changes in technology.

As expressed by others here, vigilence and public education are seen as the key to ameliorating the effects of these trends.

Tennessee

Public officials and their taxpayer-funded associations will continue to find loopholes or invent new interpretations of the law. They will use them until someone takes them to court. Public employee unions will continue to push to close personnel records in the name of personal privacy.

Recent government ethics scandal, which saw 10 state and local officials indicted in a federal bribery sting, has helped focus public attention on need for transparency. Also, creation of a funded statewide coalition will provide research and voice on the issue.

Washington

Electronic records pose new issues for requesters and agencies. We need to get concrete standards on electronic records because agencies are sometimes insisting on providing paper copies instead of electronic copies.

Washington's attorney general got rule-making authority from the legislature to provide guidance on electronic records. It is drafting standards with the input of requesters and agencies. The AG introduces bills almost every year to address specific problems in the act. Perhaps an initiative will be filed to address the inadequacies of the attorneys' fees/penalties and to create a public office to enforce the act.