



National Freedom of
Information Coalition



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Survey: People want more government transparency, traditional media less likely to sue to get it

COLUMBIA, Mo. (August 23, 2011) — While a lack of resources has made news organizations increasingly less inclined to file freedom of information lawsuits, citizens have a growing interest in government transparency and are becoming more active in asserting their right to government information.

The rise of citizen interest and the decline of newsroom aggressiveness are among the findings of an informal open government status study by the Media Law Resource Center (MLRC) and the National Freedom of Information Coalition (NFOIC).

Highlighting a trend identified in an earlier assessment, the companion surveys by the two groups show that news organizations, hampered primarily by a lack of resources, are increasingly less inclined to bring lawsuits to enforce compliance under state and federal freedom of information laws.

The online surveys, conducted between Aug. 9 and Aug. 15, are a reprise of a 2009 study, and their findings mirror some of the trends identified then. The 2009 study was part of the inspiration for the creation of the Knight FOI Fund, which provides funding to cover upfront expenses and fees for meritorious access and transparency lawsuits, and is supported by the John S. and James L. Knight Foundation.

The new findings include both good news and bad, said Kenneth F. Bunting, executive director of

the National Freedom of Information Coalition.

“If ordinary citizens are becoming more aware of their access rights, and more assertive regarding them, it is indeed a reason to be gratified,” he said. “However, if news organizations are trending toward being less gung-ho in an area once regarded as a matter of responsibility and stewardship, there is the frightening potential that journalism could suffer, as could the health of our democracy.”

Both media lawyers and representatives of the NFOIC member coalitions said they had seen an increased number of open government violations in recent years. But the state coalitions' views diverged from that of media attorneys, seeing a slight increase in government officials' understanding and compliance with requests for records and information.

Sandra Baron, executive director of the Media Law Resource Center, noted some positive trends in the responses.

“It is encouraging that some government officials' understanding and compliance with open government records requests apparently have increased. And, it is heartening that respondents report that the number of open records requests made by private citizens and other non-media organizations has grown,” she said. “While a professional objective of journalism is to keep government as open and transparent and accountable as possible, a public that also demands open and transparent government is hugely important.”

Significant Findings:

- Interest in transparency/accountability on rise.
- Knight FOI Fund's concept almost universally well-regarded.
- Lack of resources affects media willingness to bring FOI lawsuits.
- Media lawyers, FOI advocates see hotlines as valuable service.

Baron added that increased pressure by citizens for more transparency could help offset a decrease in media resources.

The two nearly identical online surveys were sent to NFOIC state coalitions and member organizations and to the Defense Counsel Section of the New York-based MLRC. Responses were received from 41 states and the District of Columbia.

In the earlier 2009 survey, 60 percent of NFOIC members surveyed reported that litigation on FOI issues had “fallen dramatically” in recent years. In the companion survey conducted at that time, 53 percent of media lawyers in the MLRC Defense Counsel Section said that media resources dedicated to forcing compliance with open government laws had “decreased slightly” or “decreased substantially” in the prior two to five years.

The surveys conducted earlier this month showed similarly troubling trends, some even more apparent.

In the current study, 60 percent of media lawyers surveyed noted a decrease in open government lawsuits by media organizations over the past five years, 20 percent said the number of lawsuits stayed about the same, and 20 percent reported an increase in lawsuits by media. Among NFOIC members, 47 percent said open government lawsuits by media had

decreased, 21 percent said the number of lawsuits stayed about the same, and only 12 percent reported an increase in lawsuits.

Lack of media resources was cited as the number one reason for the apparent decline by 84 percent of MLRC members and 92 percent of NFOIC members taking the survey.

In the current surveys, 41 percent of media lawyers surveyed and 46 percent of NFOIC members said open government lawsuits brought by others beside news organizations had increased over the past five years. Overall, 44 percent of media lawyers and 68 percent of NFOIC members thought that citizen and media expectations for more government “openness, transparency, and accountability” had increased. On both surveys, those who saw positive changes in the open government landscape listed increased awareness, increased interest in transparency and increased citizen activism among reasons. “Increased assertiveness by media” was also cited by 70 percent of MLRC members who saw things changing in a positive direction and a lesser number of NFOIC state coalitions that noted positive changes.

In addition to litigation trends, the surveys looked at the prevalence and effectiveness of FOI hotlines, trends regarding records requests, media company support for NFOIC's state coalitions, and familiarity with the Knight FOI Fund.

One Colorado attorney said the decrease in media resource for enforcing compliance with open government laws has emboldened some public officials with inclinations toward nondisclosure.

“This inability to enforce the statute has led, in certain situations, to local government agencies affirmatively refusing to comply with the statute explicitly on the grounds that the local newspaper is not going to sue the agency,” the attorney said.

That sentiment was echoed by an NFOIC state group member, who stated that “I believe they realize newspapers are no longer going to take them to court over FOI violations.”

Both the media lawyer respondents and the state FOI groups were overwhelmingly positive toward the idea and philosophy behind the Knight FOI Fund. Eighty-nine percent of respondents from the media law group and 98 percent of those from state coalitions thought a legal fund to

Number of open government lawsuits filed by individuals or other organizations besides news organizations in the past five years.



provide financial assistance for meritorious FOI and open meeting lawsuits was “somewhat useful” or “very useful.” But familiarity with the Knight FOI Fund was significantly greater among NFOIC member groups than it was among media lawyers. Only 12 percent of NFOIC members were unfamiliar with the Knight FOI Fund, but 56 percent of the media lawyers were unfamiliar.

In states where FOI hotlines are set up to provide information, advice, or legal assistance regarding FOI matters, those services got generally high marks from all respondents in the surveys.

Thirty-five percent of those taking the surveys said the hotlines’ services in their states were “excellent,” 41 percent said they were “good,” and 14.5 percent rated them as “fair,” with just over 10 percent expressing no opinion. Fifty-five percent of the state coalition and member groups’ respondents said the hotline in their state was operated by their organization. Press associations and governmental agencies like attorney generals’ offices were among the other hotline operators mentioned. Most hotlines provide advice, guidance, and access rights under law, but few offer direct legal assistance.

Bunting said the media attorneys’ lack of familiarity with the Knight FOI Fund is understandable. He said the Fund was intended to strengthen the involvement of nonprofit groups and citizen activists in FOI enforcement, but was never envisioned as simply replacing lost muscle from diminishing news-industry legal budgets. While four news outlets have been among recipients of the 21 grants awarded since the Knight Fund’s inception in January 2010, they have tended to be smaller news outlets, Bunting said.

The largest news organization to win support from the Fund so far is a 27,000-circulation daily newspaper in Wisconsin. The other news outlets to get Knight Fund support were two alternative weekly newspapers and an online-only publication in rural upstate New York. All four of the Knight Fund-supported cases for which news organizations were given grants have brought court rulings or settlements for greater public access, including one in the Wisconsin case last week. (See <http://bit.ly/pMqkW5> for more information.)

Grants awarded under the Knight FOI Fund are intended to fuel and assist the pursuit of important FOI cases by helping to defray upfront costs such as filing fees, depositions, court costs and other expenses associated with legal actions. By policy, those grants cannot pay attorneys fees, and the Knight Fund only seeks reimbursement if resulting awards or settlements in the cases cover fees and costs for which the Knight Fund money was spent.

The **National Freedom of Information Coalition** is a national network of state freedom of information advocates, citizen-driven nonprofit freedom of information organizations, academic and First Amendment centers, journalistic societies and attorneys. Its mission is to foster government transparency at the state and local level. A unit of the Missouri School of Journalism, the NFOIC is an affiliate of the Donald W. Reynolds Journalism Institute. NFOIC is based at the University of Missouri, home to the nation's oldest Freedom of Information Center. For more, visit <http://www.nfoic.org/>.

The **Media Law Resource Center, Inc.**, (MLRC) is a non-profit membership organization founded by leading American media to provide a broad range of information and support on media law and policy issues, including news and analysis of legal developments, litigation

resources and practice guides, and national and international media law meetings and conferences. MLRC also works with its membership on responding to legislative and policy proposals that may affect First Amendment and free expression rights. MLRC's law firm wing, the Defense Counsel Section, has more than two hundred member firms nationwide, in Canada, England and elsewhere around the world, engaging in media and First Amendment defense representation. For more, visit <http://www.medialaw.org/>.

The **John S. and James L. Knight Foundation** supports transformational ideas that promote quality journalism, advance media innovation, engage communities and foster the arts. The foundation believes that democracy thrives when people and communities are informed and engaged. For more, visit <http://KnightFoundation.org/>.

For additional information and to view the surveys in their entirety, see <http://bit.ly/oLzkVY>.