Legislating Open Government:
The Prevalence of Transparency-Related Language in 2019 State Legislative Bills

National Freedom Of Information Coalition

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"Sunlight is said to be the best of disinfectants."

-Louis Brandeis,
U.S. Supreme Court Justice from 1916-1939

WHY NFOIC DID THIS STUDY

Transparency in government is the fundamental bedrock of what makes a nation free.

But government transparency is not dictated by strong legislation alone. It is achieved through well-written laws combined with an open culture, all administered by competent officials with robust public oversight.

For more than 30 years, the National Freedom of Information Coalition and state-level coalitions have fought for government transparency in their own backyards.

We have long known that transparency has a wide-reaching impact on varying aspects of government and how it affects our day-to-day lives. State legislatures create laws that set the tone and policy for how the three branches of government and other state and local establishments will interact with and respond to the public's interests and request for access, transparency and accountability. With this report, we take a closer look at state legislative branches and transparency- or "open government"-related legislation across the nation and attempt to quantify and qualify its reach.

While tracking legislation impacting government transparency is just one component of ensuring an open and accessible government, it can be extremely difficult, time consuming and incomplete. NFOIC believes this research is the first step toward a holistic approach in measuring and analyzing state transparency-related legislation introduced across the U.S. in a single legislative session and the potential for future tracking and oversight.

Of the 142,057 bills introduced in all 50 states and the District of Columbia in 2019, transparency-related search terms that we selected returned 19,311 "unique" or individual bills. That translates into about 13.6 percent of all 2019 bills across U.S. states, the District of Columbia, and Puerto Rico contain elements that address government's stewardship of public information and the public's ability to gain access to it.

Transparency issues arise in all kinds of bills — everything from how public data is collected, organized, managed and disseminated by government, to the balance between personal privacy and the public's right to know and how government interacts with the private sector.

The impact of transparency ranges from the abstract to the most personal: Should legislators exempt themselves from being subject to their state transparency laws? Should the public know the names of police officers who have shot and killed civilians? Should residents know how much of their tax dollars a government is offering to attract or retain a private company in their jurisdiction?

According to NFOIC's state coalitions members, 76 percent said they do some form of bill tracking. But the methods for bill tracking varied greatly: About half of the respondents who said they do legislative tracking work with their state press association. The rest said they use alerts through their state's legislative website, relied on media reports, or they relied on outside special interest groups to learn about the bills. Their accuracy to identify and track important bills that affect their state open government laws relies on their available financial and human resources.

This wide variance and lack of consistency in legislative tracking from respondents shows there is an opportunity for comprehensive FOI legislative tracking nationwide that can in turn be used to empower more people at the state and local levels.

SUMMARY

In early 2019, NFOIC approached [Quorum](#), a Washington D.C.-based software company, for a potential partnership. Quorum's software collects, analyzes and key codes every word of every bill from every state legislative website. This technology updates in real time, meaning that as bills are posted publicly, they enter the software for analysis. The two organizations agreed to work together to conduct a pilot project to quantify FOI-related bills following the 2019 state legislative sessions.

By utilizing Quorum's software, and creating a streamlined approach, our hope is that state FOI coalitions and the FOI community can have a more systematic process for tracking transparency legislation and that, on the national level, NFOIC can spot trends among the states and fill in the gaps of knowledge. The pilot project with Quorum yields seven key observations, including:

1. **Government transparency is not guaranteed with strong legislation alone.** It is achieved through a combination of well-written and enforced laws, open culture of compliance, and competent administrative policies and practices among public officials, all with robust public oversight.

2. Transparency is an extensive and necessary ingredient for government operations in the U.S. **Our research shows 13.6 percent** of all 2019 bills across U.S. states, the District of Columbia, and Puerto Rico contain elements that address government's stewardship of public information and the public's ability to gain access to it. Feedback from some state FOI coalitions suggested, the percentage of transparency bills they tracked during the 2019 session averaged around 10 percent of the total

of all bills introduced. One explanation between the percentages is the number of bills *identified* and the number of bills *prioritized* by the state coalitions for tracking.

3. **Finding accurate bill language is both an art and a science.** In this pilot, we learned broad search terms often bring in too many results and further refinement of search terms is needed. Weeding out extraneous bills is necessary, and the lack of standardization of transparency search terms from state to state creates an additional challenge.

4. The data showed **the primary issue areas most prevalent with transparency-related language** included Economic Development, Crime and Law Enforcement, Economics and Public Finance, Education, Government Operations and Health Care

5. While state Democrat legislators sponsored more transparency-related legislation in 2019, state **Republican legislators were more successful** at getting transparency-related legislation enacted.

6. The potential for **tracking and reporting transparency-related bills in real time** is an option that will provide substantial benefits to the FOI community to increase their effectiveness to identify and address proposed bills that negatively affect existing open government laws while they are being deliberated.

7. Using raw bill text from this and past legislative sessions to **create a machine learning algorithm** should improve identification and possibly predict future transparency-related legislation and trends.

METHODOLOGY

To begin, we created a list of potential search terms, including legal terms, that are common in open records and meetings laws. These terms formed the basis for Quorum dashboards, which allowed us to see how prevalent transparency-related language was in introduced bills. Using the dashboards, we were also able to break down these bills by their status (introduced, passed committee, enacted, etc.) and create visualizations to get an idea of the geographic prevalence of the terms by state.

After creating dashboards in Quorum, we selected certain sets of results to dive more in-depth, revealing trends and other information about topics related to transparency. For example, we wanted to look at the number of economic development bills that had transparency-related provisions (or exclusions), bills related to criminal justice transparency, education records, the creation of new records or data, and the prevalence of health care financial transparency bills, among others.

We agree that the volume of bills initially identified was too great. So we did a deeper dive for a handful of states. We found that Quorum identified 60 percent (Texas) to 80 percent

(Washington) of bills those state coalitions were already tracking. On the flip side, the bills that states were tracking accounted for only about 15 percent of all the bills Quorum identified — again illustrating that it was picking up both extraneous bills and that we were also tracking transparency-related bills (like expungement) that the [Freedom of Information Foundation of Texas](#) did not track, for example.

In attempting to standardize the language across all 50 states, NFOIC found too many bills using Quorum. Even though many of them were transparency-related, each state coalition subjectively prioritizes what it deems most important to track.

A proposed solution is to work more closely with each state coalition director to better customize our key word search terminology and tailor it to each state — including dropping some terms we're currently using and adding news ones. That should result in fewer bills scraped (quantity) and improve the percentage of bills that are "relevant" (quality). By doing this, we believe we could dramatically increase the success to identify most, if not all of the bills that coalition directors deem relevant.

Ultimately, there is no one size fits all approach for keyword standardization when tracking 51 different legislative bodies.

LIMITATIONS

A single year snapshot does not show long-term trends, but we hope this analysis creates a baseline for studying the use of these terms over several years to see how transparency bills evolve, and what other topical or language choice changes occur over time.

This analysis does not attempt to determine whether these transparency-related bills are "good bills" or "bad bills," but simply to identify that they are in some way associated with the principles of transparency. NFOIC ultimately believes that determination for "good bills" and "bad bills" should be made by state FOI coalitions (or from others in the FOI community) because of their jurisdictional knowledge and understanding of how particular legislation may interact with current open records and meetings laws in their states. From a national perspective, we want to use this data to inform us on broad trends and to alert state coalitions and the FOI community of potential issues.

The results from these search terms do not mean that 100 percent of the bills are relevant to transparency laws, but rather that these transparency-related search terms were included in the raw bill language. In the future, some terms may become irrelevant, or new ones will be added over time.

The large quantity was due to our attempt to standardize terms. We also found a number of states did not use all of the search terms in their own tracking and often only used terms unique to their own jurisdiction that increased the number of "extraneous" bills we identified.

More than 19,000 bills nationally is a large, burdensome volume of potential legislation to track. Some states naturally generate more legislation than others. Some reasons for that include the number of legislators, legislators' appetite for writing and introducing new bills, and the frequency that the legislature meets.

TRANSPARENCY-RELATED SEARCH TERM RESULTS

Table 1: *Quorum query search terms and bill counts, 2019 legislation*

	SEARCH TERM (alphabetical)	BILL COUNT	PERCENT OF TOTAL LEGISLATION (142,057**)	NUMER ENACTED	PERCENT ENACTED
1	Body Camera	79	0.1%	13	16.4%
2	Closed AND Record	4,210	3.0%	1,128	26.7%
3	Confidential	6,121	4.3%	1,275	20.8%
4	Confidential WITHIN 5 OF Record	1,234	0.9%	294	23.8%
5	Data AND Record	6,531	4.6%	1,369	20.9%
6	Data Portal	19	0.0%	2	10.5%
7	Economic Development AND Confidential	562	0.4%	158	28.1%
8	Economic Development AND Record	1,235	0.9%	397	32.1%
9	Education WITHIN 5 OF Record	1,048	0.7%	264	25.1%
10	Exempt AND Record	6,846	4.8%	1,506	22%
11	Exempt WITHIN 5 OF Record	1,035	0.7%	248	24%
12	Expunge	1,026	0.7%	178	17.3%
13	Freedom of Information	510	0.4%	100	20%
14	Incident Report OR Incident Record	114	0.1%	25	21.9%

15	Judicial WITHIN 5 OF Record	**376**	**0.3%**	**108**	**28.7%**
16	Legislative WITHIN 5 OF Record	**738**	**0.5%**	**328**	**44.4%**
17	Meeting AND Closed	**4,150**	**2.9%**	**982**	**23.7%**
18	Open Record OR Open Data	**345**	**0.2%**	**81**	**23.5%**
19	Open Meeting	**674**	**0.5%**	**150**	**22.3%**
20	Public Information	**1,254**	**0.9%**	**408**	**32.5%**
21	Public Record	**2,626**	**1.8%**	**677**	**25.8%**
22	Public Record AND Fee	**1,592**	**1.1%**	**429**	**26.9%**
23	Right to Know	**84***	**0.1%**	**20**	**23.8%**
24	Sunshine	**157**	**0.1%**	**48**	**30.6%**
25	Transparency	**2,049**	**1.4%**	**374**	**18.3%**
26	Transparency WITHIN 5 OF Record	**55**	**0.0%**	**10**	**18.2%**
	TOTAL UNIQUE BILLS	**19,311**	**13.6%**	**4,570**	**23.7%**
	TOTAL LEGISLATION INTRODUCED IN 2019**	**142,057**	**--**	**34,555****	**24.3%**

Fetal heartbeat disclosure bills excluded from this figure
**As of Sept. 9, 2019.*

ISSUE AREAS

Quorum software automatically detects the general issue areas for bills included in its dashboards. The following categories were identified in the searches for transparency-related legislation introduced during 2019 state legislative sessions. The extent of their purpose or how they are affected by or affect the state transparency laws requires further exploration.

Table 2: *Primary Issue Areas of Transparency-related bills introduced in state legislatures, 2019*

Primary Issue Area	Bills Introduced	Percent Introduced
Blank/Undetermined	894	4.6%
Agriculture and Food	89	0.5%
Animals	59	0.3%
Armed Forces and National Security	286	1.5%
Arts, Culture, Religion	303	1.6%
Civil Rights and Liberties, Minority Issues	646	3.3%
Commerce	1324	6.9%
Congress	1246	6.5%
Crime and Law Enforcement	1724	8.9%
Economics and Public Finance	1377	7.1%
Education	1214	6.3%
Emergency Management	144	0.7%
Energy	188	1.0%
Environmental Protection	177	0.9%
Families	299	1.5%
Finance and Financial Sector	483	2.5%
Foreign Trade and International Finance	71	0.4%
Geographic Areas, Entities, and Committees	223	1.2%
Government Operations and Politics	1261	6.5%
Health	1556	8.1%

Housing and Community Development	423	2.2%
Immigration	25	0.1%
International Affairs	111	0.6%
Labor and Employment	685	3.5%
Law	2085	10.8%
Native Americans	28	0.1%
Private Legislation	2	0.0%
Public Lands and Natural Resources	258	1.3%
Science, Technology, Communications	622	3.2%
Social Sciences and History	22	0.1%
Social Welfare	349	1.8%
Sports and Recreation	159	0.8%
Taxation	477	2.5%
Transportation and Public Works	409	2.1%
Water Resources Development	92	0.5%
Grand Total	19,311	100%

TRANSPARENCY LEGISLATION BY PARTY AFFILIATION

Of the 19,311 bills we analyzed, 17,053 had the party affiliation of the primary sponsor listed. Party affiliation was not listed in the data when a bill was sponsored by a committee or executive branch position. Additionally, members of Nebraska's unicameral legislature do not have party affiliations, so that data was not included (168 bills). We found that while state Democrat legislators sponsored more transparency-related legislation in 2019, the bills introduced by state Republican legislators were enacted more often.

Table 3: Transparency-related legislation bill status snapshot by primary sponsor party affiliation, state legislatures, 2019

SPONSOR PARTY	Introduced or Pre-filed but no further	Out of Committee but no further	Passed Original Chamber but no further	Passed Second Chamber but no further	Sent to Executive but no further	Enacted	Grand Total
D	5868	1091	855	152	113	1732	9811
R	3593	683	696	78	99	2072	7221
I	3		4			8	15
PNP	5						5
PPD	1						1
TOTAL	**9470**	**1774**	**1555**	**230**	**212**	**3812**	**17053**

Party Key:
D: Democrat   *R: Republican*
I: Independent   *PNP: New Progressive Party (Puerto Rico)*
PPD: Popular Democratic Party (Puerto Rico)

OBSERVATIONS

This pilot study was to help advance a high priority need identified by NFOIC's state FOI coalitions to identify and track legislation in their jurisdictions that affects that state's open government laws and policies. The findings show there is potential to help the coalitions --or anyone with a similar interest-- with this task. However, more work is needed to realize the true benefits of this solution as an efficient method to save time and increase oversight effectiveness.

We are encouraged by what has been discovered in this groundbreaking pilot project and the prospective use of the technology prior to and during state legislation sessions as a resource and tracking method to follow the legislatures and targeted transparency bills.

For example, Quorum's solution inspects the descriptions of the bills to retrieve matches to our search terms. Acquiring the raw data of the entire bill language (a feature that was unavailable in the pilot project) and utilizing machine learning could achieve greater

accuracy by narrowing the findings and making the output more beneficial to the state coalitions and the FOI community.

In addition to quantifying transparency-related bills, there is a qualitative component of the pilot project that gives the public a peek at new and/or interesting areas of exploration for current transparency topics and future FOI challenges found among newly introduced bills in 2019. The fate of these bills varied, and some that were not enacted this session may be revived in future sessions. Highlighted themes included:

- Financial transparency as part of the "Student Loan Bill of Rights," which have been introduced in 36 states over the last several years and enacted in a handful of states.
- A New York bill enacted to exempt disclosure of video camera footage from school buses.
- A Massachusetts bill that aimed to exempt higher education directory information.
- A New Jersey bill that would have exempted any record that includes an individual's name, address, telephone number, as well as pet licensure information.
- An enacted Florida bill that expanded an existing exemption of photos or videos that depict the killing of victims of mass shootings from disclosure.
- A failed Kentucky bill that would make it harder for the public to learn about businesses seeking financial incentives from the state.
- An Illinois bill to close access to police gang databases.
- Another Illinois bill that was enacted to expand instances for public meetings to be closed.
- A Utah bill that enables political candidates not to disclose their home addresses.
- A West Virginia bill placing cameras in special education classrooms.
- A Rhode Island bill proposed creating a new records administration program that would include a public records advisory commission with civil penalties for violation.
- And Hawaii had several bills introduced promoting proactive disclosure and data administration.

Additional observations are available in the full report at NFOIC.org.

REAL WORLD APPLICATION FOR THE FOI COMMUNITY

Better monitoring of state legislatures by tracking transparency-related bills is essential to create open government laws that do not restrict access, or are ambiguous and lead to bad practices. However, we are fully aware that even acceptable transparency laws are ignored or violated by public agencies and officials.

This project identifies important research data surrounding a challenge for the FOI community: halting obstructive open government legislation before it becomes a bad law, a bad policy, and a candidate for litigation. The analysis provides research that will assist the work of the community members including state open government coalitions, government

watchdogs, journalists and news organizations, pro-democracy groups, and first amendment advocates.

As stated earlier, a single year snapshot does not show long-term trends. This pilot project enabled NFOIC to study transparency-related legislation introduced in the 2019 state legislative sessions. And the data appears to complement similar work conducted by our state coalition members, and for some, more cost-effectively. It is also a solution to help members within the FOI community who lack the resources to quickly get up to speed to follow their state legislative sessions.

What is also realized are the possibilities (and limitations) of using a technology solution for tracking bills along with their status *during* state legislative sessions. With further refinements, this would provide a great benefit to NFOIC state coalitions and to the FOI community. Further refinement of search terms is needed to ensure relevance and helpfulness to the community. Ultimately, the potential of web-scraping combined with machine learning, is a valuable and more systematic way to track transparency-related legislation across the U.S., especially in real-time.

ABOUT NFOIC

The National Freedom of Information Coalition protects your right to open government. Our mission is to help establish, support and empower state coalitions in order to improve the laws, judicial remedies, and practice of government information dissemination at the state and local levels.

We are a national nonprofit, nonpartisan organization of state and regional affiliates representing 35 states and the District of Columbia. Through our programs, services and national member network, NFOIC promotes press freedom, legislative and administrative reforms, and dispute resolution to ensure open, transparent and accessible state and local governments and public institutions. To learn more, visit www.nfoic.org.

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