

FOIA audit shows widespread abuse; records provided only 58% of the time

For three decades access to public records has been guaranteed by Virginia's Freedom of Information Act.

But when representatives of 14 Virginia newspapers asked for public documents in each of the state's 135 cities and counties, officials complied with just 58 percent of their requests.

The findings, published Nov. 1, involved requests made in the week of Aug. 10 for five specific documents that are supposed to be public records.

State-run health departments had the best compliance rate, producing a requested health inspector's report for a local restaurant in 88 percent of the localities.

But local law-enforcement offices failed the access test almost everywhere.

When asked for a daily crime log or incident report, only 16 percent of the police departments or sheriffs' offices complied.

The audit's other findings:

Disclosure of the most recent travel voucher for a county administrator or city manager: 73 percent.

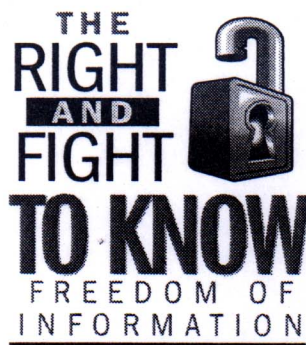
Disclosure of state-mandated reports of violence and crime at local schools: 72 percent.

Disclosure of salaries and other compensation for high school football coaches: 47 percent.

The series, which was coordinated by the Associated Press, helped dramatize the need for a simple, easy-to-understand Freedom of Information Act and formal, on-going FOIA training for all local-government employees.

The last such training, organized statewide, occurred in 1990.

"If you make the (FOIA) request at a higher level, you're going to get the information, said James D. Campbell, executive director of the



Virginia Association of Counties.

But "a citizen coming in off the street . . . is going to expect the front line to know what to do. That gives me concern."

Albemarle County Sheriff Terry Hawkins, immediate past president of the Virginia Sheriff's Association, agreed:

"It's not the chiefs and the sheriffs that you have to worry about; you have to enlighten and educate the ones that are working the counters."

Hawkins said FOIA training should be included in the state's mandatory training program for all new officers, then repeated every two years.

"We need to redouble our efforts to make sure all our local officials understand our FOIA laws inside and out," said Michael Amyx, executive director of the Virginia Municipal League.

While he was heartened to hear that most municipalities complied with the law, Amyx said he would like to see 100 percent compliance.

The study was criticized as "bordering on the unethical" by Frank Barham, executive director of the Virginia School Boards Association.

"In the name of openness," he charged, press personnel were "secretive and devious" in identifying

themselves only as concerned citizens when they asked for the public records.

Barham, a long-time press critic, said they should have disclosed they were newspaper employees.

Former Del. Ralph "Bill" Axselle Jr, who headed the state's last in-depth FOIA study in 1988, disagreed.

"It should make no difference if the person asking for the information is a reporter. The Freedom of Information Act isn't designed for reporters. It is designed for the public, which includes reporters," Axselle said.

Del. Clifton "Chip" Woodrum, chairman of a legislative subcommittee currently looking at FOI problems, asked, "How else are we going to find out if somebody doesn't do a test?"

"We chose to identify ourselves merely as citizens (to) give a more accurate picture of how an ordinary citizen might be treated," said Will Corbin, editor of the (Newport News) Daily Press, and John Denniston, a Richmond Times-Dispatch editor. Corbin served as chairman of the Virginia newspapers' project; Denniston was project editor. "We instructed the data gatherers to tell no lies," Corbin and Denniston emphasized.

Ceci Benfer, president of the Virginia Government Communicators, said FOIA training is "just not standard fare for the average government employee. It might be painful for some people because they'll have to start a new learning curve."

But Benfer said "a lot is going to be learned (from the study) and a lot of people will benefit from it. The public information officers who comprise her group will use the study results to promote change, she said.

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John Edwards, who is editor/publisher of The Smithfield Times and the media's representative on Woodrum's study panel, said "The survey punctures the theory that this is a press issue; this is a citizens' issue. This was a tremendous effort on behalf of access in Virginia. We should all applaud those involved."

The series included stories about some of the individual members of the Virginia Coalition for Open Government who have encountered access problems in the last couple of years.

When Randy Slovic, a state officer of the Sierra Club, moved to Virginia from Maryland a year or so ago, she immediately asked to be notified of Richmond City Council meetings and began attending the sessions. She also asked that agendas be sent to her prior to the meetings. Only later did she discover the council routinely was holding preliminary meetings three hours in advance, without giving her prior notice. When she complained to

Most of the Virginia newspapers' FOI stories, including audit data for each of the state's 135 cities and counties, can be found at the following website:

<http://www.pilotonline.com/special/foi/index.html>

Woodrum's panel, the problem got fixed.

In the summer of 1996, Bill Holt came across a pamphlet of the open records law at a Narrows Town Council meeting. A retiree and recent transplant from Florida, Holt said, "I fell in love with it when I read it. It was like an epiphany." His infatuation turned out to be short-lived. Although he was given Town Council minutes, payroll data and other public documents that he requested, he was told he wasn't entitled to current crime logs that listed suspected crimes, addresses, dates and names of

investigating officers. (He was given older logs, only to be told later that had been a mistake.) Town Attorney Garland Spangler claimed the town could keep its crime logs secret under FOIA's exemption for felony cases, under investigation. Holt decided not to go to court. Instead he joined the Coalition.

The Virginia newspapers' survey was patterned after a 1997 survey by seven Indiana newspapers. In the Indiana audit, compliance with FOI rules ranged from 21 to 86 percent, with law-enforcement records again proving the most inaccessible.

Newspapers participating in the Virginia project were the Richmond Times-Dispatch, the Daily Press, The Roanoke Times, The (Norfolk) Virginian-Pilot, the Free Lance-Star of Fredericksburg, The (Lynchburg) News & Advance, the Daily Progress in Charlottesville, the Danville Register & Bee, the Manassas Journal Messenger, the Potomac News in Woodbridge, the News-Virginian in Waynesboro, the Culpeper Star-Exponent, the Herald-Courier in Bristol and the Coalfield Progress in Norton.

Press comment on the FOIA series

The Journal Newspapers of Northern Virginia:

The state law that requires an open government isn't quite a joke — at least not a funny one. But with its growing number of exceptions the Virginia Freedom of Information Act is a devilish misnomer. As one state lawmaker has suggested, the law ought to be called the Virginia Freedom of No Information Act.

A blistering series of stories compiled by downstate Virginia newspapers and run by The Associated Press brought example after example of how ill-informed or malicious state and local government employees too often don't comply with even this Swiss cheese of a law.

The upshot: Too often public officials don't want to be bothered giving the public — reporters and everyone else — the sort of public information they are entitled to have.

The series should be a wake-up call to local officials and to residents who want to know that their governments are operating in the sunshine as much as possible. That's really why the law exists: not just to give pesky reporters a means to earn their keep, or to give your friendly supervisor or councilman a hard time, but to give all residents the ability to find out what their governments are doing on their dime.

If they aren't already doing so, local governments and state agencies

should be briefing employees and officials on what they are required to do and what information they must release under the Freedom of Information Act. That goes for county supervisors, city council members, school board members and (very important) their attorneys right down to police desk clerks and health department secretaries.

And state legislators who are reviewing the law must focus on whittling down the exceptions and examining the wording of the act so that public officials can't use vague language to close meetings that ought to be open to their constituents.

The best-run governments are the

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ones that operate in the light of day as much as possible.

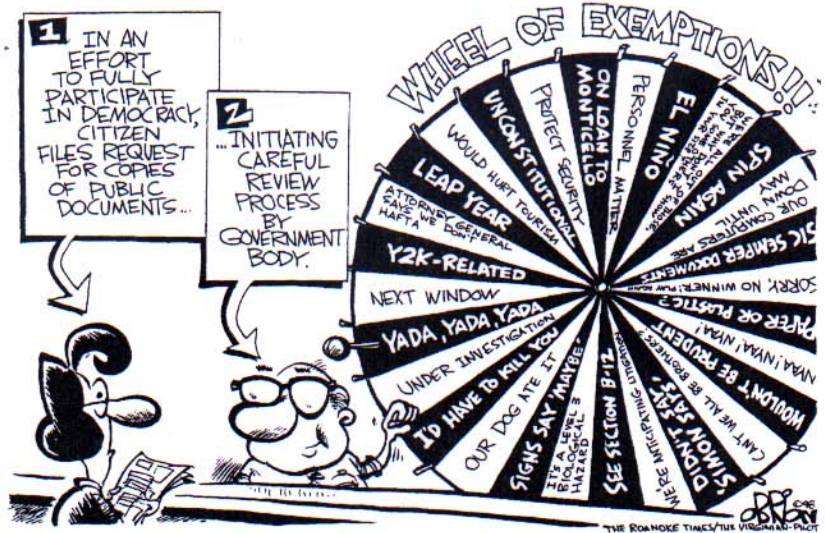
The Daily Press, Newport News:

Public officials everywhere ought to consider the excellent example of Wise County Circuit Court Clerk Jack Kennedy, who faced down the state for the right to post public information on the Internet, accessible without charge.

Unfortunately, if the Internet is to be a good source of local government information, it will more likely be the result of a requirement written into the state code – and written to be easily and readily enforced.

The FOIA series proves that Virginians cannot rely on voluntary compliance, whether it's electronic

HOW VIRGINIA'S "FREEDOM OF INFORMATION ACT" WORKS:



records on the Internet or paper records at the school office.

That's why citizens should tell their representatives in the General Assembly that they demand a law

that will force officials to acknowledge that government information is the public's information, and will penalize them when they don't obey.

Allen unseals historic records

RICHMOND – When Gov. George Allen left office last January, he asked the Library of Virginia to keep some of his records sealed – some for 30 years, some for 50, some for 100 (the latter included records of the ill-fated deal to build a Disney amusement park upstate). Historians protested that records going back to former Gov. Patrick Henry were open – and Allen's should be too. Less than 24 hours after The Roanoke Times disclosed that one in every 20 of Allen's records had been wrongly sealed, the former governor "saw the light" (as the Virginian-Pilot put it, editorially), and ordered all of the records unsealed. "The official stuff belongs to the state of Virginia," said ex-Gov. Linwood Holton. State law allows governors to retain personal correspondence, but they are required to turn over all official papers. The law sets out no procedures for sealing official records; library officials suggested taping and labeling the sealed records only after Allen Administration officials asked for advice on how to do it.

SCC still claims FOIA exemption

RICHMOND – For a time this past summer, the State Corporation Commission refused to give the Richmond Times-Dispatch any details about legal fees and administrative costs totaling more than \$45 million, in two ongoing receiverships involving insurance companies seized several years ago. But when State Sen. William T. Bolling, R-Hanover, intervened, the information was made public – with the SCC still claiming, as it always has, that it's not covered by FOI law. Bolling, a member of the FOIA study commission, asked for "the full legal basis for (the SCC's) contention that the FOIA does not apply to the commission, and what public policy reasons the commission can assert" for that contention. Until now, the state Supreme Court has ducked the issue. The SCC says it's a quasi-judicial agency, on a par with the Richmond Circuit Court that hears FOIA challenges of other state agencies, and thus enjoys a constitutional exemption from FOIA (if that's so, perhaps, the SCC's FOI cases

ought to be taken directly to the state Supreme Court – instead of just being ignored).

Operation Blessing inquiry drags on

RICHMOND – The Office of Consumer Affairs finished a year-long probe into the alleged use of two planes owned by Operation Blessing, Pat Robertson's tax-exempt international charity. But instead of releasing the report, it sent it on to Attorney General Mark Earley, who kept it under wraps as an "ongoing investigation" and a "working paper" protected by the attorney-client privilege. State Sen. Janet Howell, D-Reston, sought the inquiry after it was reported the planes were used for diamond mining. Robertson later reimbursed the charity. Robertson was Earley's biggest contributor in the '97 campaign, with a direct gift of \$35,000. Continued confidentiality, the Virginian-Pilot said in an editorial, "points to weaknesses in (FOIA) and raises conflict-of-interest issues."