

Media Access to Government Information Conference

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Access to State, Local, and Tribal Government Records

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Reporters have used state and local government data to do original reporting on stories that might not be possible otherwise. And in many cases, those stories have prompted important changes.

Reporters at the *Las Vegas Sun* showed how preventable infections and injuries were occurring at Las Vegas hospitals and made data about those hospitals available to consumers.

Los Angeles Times reporters used local data to reveal corruption in the tiny California community of Bell. The stories resulted in millions of dollars in refunds for taxpayers and improved access to government salary information in California.

But doing such work has become increasingly difficult as newsrooms have downsized. Newsrooms have fewer resources to launch court battles for public records and have less time to spend negotiating for information and little money to wage lawsuits to gain access to information. As Washington Bureaus have emptied, so too have statehouse bureaus around the country. American Journalism Review found a 30 percent decrease in the number of statehouse reporters across the country from 2003 to 2009.

States vary greatly in how well they provide access to certain records. But in many places, the most common factors that make getting state and local government data more difficult are prohibitive fees for processing information, privacy regulations, technical difficulties and laws that don't always provide for access to databases.

In some places, records requesters continue to face per-record charges for databases amounting to thousands of dollars for a single database. When *The Dallas Morning News* sought criminal incident data from the Dallas police department (a clearly public database), the estimated cost exceed \$40,000.

Your request for information pursuant to the Public Information Act has been received by this department, and was forwarded to the appropriate unit. The respective unit has determined that the cost of reproducing the requested materials will be approximately \$ 42,744.00. Below is an itemized list of the estimated cost.

<i>Quantity</i>	<i>Item</i>	<i>Cost</i>	<i>Extended Cost</i>
1,200	Programming Time	\$35.62	\$42,744.00
<hr/> <i>Overhead Charge</i>		<i>\$0.00</i>	<i>Estimate Total \$42,744.00</i>

A deposit of at least \$ 21,372.00 or a payment of \$ 42,744.00 is required before copies of these

After months of negotiating, which, by the way, used city resources, the newspaper obtained the information for a few hundred dollars – the actual cost to process the request.

When reporters at *The Modesto Bee* tried to get electronic mapping files of voting precincts, the county elections office refused, offering paper or PDF files instead. The officials claimed that, because it took county workers many hours to create the files, the data should be protected work product. Unfortunately for them, California law covers this only if the government workers had created the programming language. In this case,

the county used commercial mapping software. The reporters ended up getting the mapping files, but got them too late to do the story for which they needed them.

When the *San Jose Mercury News* sought a copy of the database listing information on participants in the state's "Adopt-a-Highway" program, its request was denied because it infringed on the participants' privacy — even though their names are already displayed on highway signs.

In some states, where government agencies contract with private companies for data processing information has been withheld because it was not in the hands of the government agency. In other states, courts have said that if the private organization is doing government business, then the information should still be available.

This discussion comes at an unfortunately timely moment, as a growing number of states are seeing assaults on public access laws led by legislators.

Much publicity has been given to the battle over open records access in Utah, where the state Legislature initially passed legislation that dismantled key portions of its open records laws, including restricting access to some forms of electronic communication by officials, including voicemail and text messages.

Less attention has been paid to efforts elsewhere. Access to key public information has either already been restricted or is under attack in numerous states, including some known for their strong open records laws, such as Florida and Texas. Protectors of open government know they must remain diligent every time legislators convene. But the scope and scale of the actions being proposed this year is sobering.

For example, in several states, efforts are underway to restrict access to public employees' dates of birth (an effort already successful elsewhere). Why does this matter? Say, for example, a journalist or other member of the public potentially identifies a parks employee as a registered sex offender. Date of birth is often essential to confirming whether someone with a common name is, in fact, the person in question. The arguments in favor of restricting access center on the whether making birth dates public could create a risk of identity theft. But the arguments ring hollow. Some of these same states already sell databases, such as motor vehicle licenses, that include the date of birth of every citizen with a license.

One of our editors once gave some practical advice: never complain about how she did something without providing another option, so here is a list of suggestions for local and state government agencies for improving access to local and state government data:

Build systems with open records in mind: Any new computer systems should be designed with public information in mind and so that restricted information can be withheld easily if necessary.

Keep it simple: Make data available in pure, basic formats such as csv files. Pretty graphics and flashy Web sites are not as useful as actual records.

Follow the law: If data fields are releasable — release them.

Know the law: Educate records administrators and public information officers on the state's open records laws. (Texas now requires many of them to attend training.)

What we most need to know: Records about licensing, enforcements, inspections and how taxpayer money is spent should be made available. Spending information is particularly important at a time when state budgets are being slashed.

But wait, there's more: Provide documentation and codes so users can properly interpret the data. Recent legislation in Maryland proposed closing access to such "meta data," which in some cases would make the records themselves unusable.

And for news organizations, write about open records. Readers actually do care about getting information on what their government officials are doing. When information is being kept from the public, tell them.

Another key question for this forum is this: *What can the federal government do to encourage state government to be more transparent?*

There are several areas in which the federal government has a direct responsibility for records the state is gathering or generating, because those records and data are being funded by federal grants or programs, or because of federal requirements. The following recommendations would help ensure that such information is available to the public.

- In all cases where federal money is involved in a project, whether through a grant, an appropriation or other means, make it policy to include a requirement that all records related to the project are considered open and required to be made available for public inspection by the state agency receiving the funding, and that to not do so carries financial penalties.

Why is this necessary? Because in many cases, members of the public trying to get information on a state program that is federally funded end up in an access no-man's land. State officials will either drag their heels or decline to give out details of the program, including basic budgetary information. Or, the state agency will refer the matter to the federal agency providing the project funding. But that agency doesn't necessarily have the most up-to-date information, or it often refers the requestor back to the state agency, creating a cycle of frustration and futility.

- Similarly, in cases where federal funds are involved, set requirements limiting outrageous fees.

Too often, public officials at the state level use fees as a way to de facto stop a public records request, knowing that if they make the price high enough, many if not most of those requesting data will give up.

One journalist describes requesting records of environmental work conducted by state agencies at the request, and through funding, from the EPA. Some states refused to make the reports available. Others came up with prohibitive fees, sometimes in ways that are so creative that you've almost got to respect them for it. In one case, state officials initially demanded that the journalist hire an outside company to provide a rented copying machine for \$300 to copy a 50-page report.

More common are estimates of personnel time to gather information, or of computer programming time to extract it from files, that far exceed what is reasonable, or credible, for the work being done. A savvy records requestor can often negotiate these fees down significantly, but not all states have caps on fees,

and many members of the public aren't knowledgeable enough about how the game is played to get through this roadblock.

The federal government should require that, when states are handling records gathered or generated through a federal contract or program, a standard fee chart be used to fill requests. There's nothing wrong with paying actual costs for obtaining data or reasonable fees for copying, but fees shouldn't be used as a way to circumvent the law, and the federal government shouldn't be party to that.

- In many instances, vital public information is assembled by states for reports required by the federal government. Particularly in cases where these reports don't show the state agency in a favorable light, state agencies sometimes refuse to provide them or construct endless roadblocks.

It should be federal policy that all such information collected by a federal agency from a state government is public information that must be provided by the federal agency, except in cases where the information would be exempted by the federal FOIA.

Resources:

- The Reporters Committee for Freedom of the Press: www.rcfp.org
- National Freedom of Information Coalition: www.nfoic.org
- Brechner Center for Freedom of Information: www.brechner.org
- Investigative Reporters and Editors: www.ire.org
- ProPublica: www.propublica.org