



YOURS FOR THE ASKING

Kentucky's open records audit

Survey shows most comply with requests for records

But jails aren't as forthcoming as law requires them to be

By Mark R. Chellgren
Associated Press

A statewide survey to determine whether public offices are allowing citizens to view government documents showed most are obeying the state's Open Records Act, but compliance is not uniform.

The first audit of compliance with Kentucky's Open Records Act in 114 of the state's 120 counties drew responses from hostility and suspicion to cooperation and helpfulness. (There were not enough auditors to check the other six counties.)

A request to inspect the city budget in Greensburg was met with a smile, a free copy and a piece of candy. An inquiry about a list of prisoners at the Montgomery County Jail led to a demand for identification and intimidation by jail employees.

The records sought in the survey were a city budget, a county judge-executive's expense report, a school superintendent's contract and a jail log — documents in local and state government possession that can affect daily lives.

Other types of records might answer such questions as: How safe are schools? Is a shopping center planned for that vacant lot down the street? When is a street to be repaved? Is a city council member getting campaign money from a contractor? Is the mayor's nephew on the payroll?

The survey was organized by the Kentucky Press Association, The Associated Press, various newspaper and professional groups, and several university student programs.

More than 100 students, volunteers and newspaper employees visited four local government offices on Oct. 21 seeking specific public records. They were told to act as any ordinary citizen when making their requests.

Strengthen public access

"Our hope is that this collective effort will enlighten the public, the legislature and custodians of public records across our state, and that public access to government will be



Dick Bowman pried open records last year of a nonprofit foundation that had been secret for 40 years and won perhaps the largest settlement of an open records lawsuit in Kentucky history — \$5,700. "They think I'm crazy ... but they take me seriously now," said Bowman, a 75-year-old systems engineer.

strengthened," said John Nelson, immediate past president of the KPA and managing editor of The Advocate-Messenger in Danville.

The open records law is supposed to be the window through which Kentuckians can take a hard look at how their government works — or doesn't work.

The preface to the 1976 law is a clear statement about government and its relationship to the governed: "The General Assembly finds and declares that the basic policy ... is that free and open examination of public records is in the public interest and the exceptions ... shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others."

In spite of the demands some local officials made during the October survey, the law requires only that a request include a legible name, a signature and a description of the records.

But opening the window for citizens to peer into government in-

involved a long struggle in the legislature and still requires continuing give and take to educate public officials and employees and the public about the law.

Even though the overwhelming majority of public agencies complied in the survey, there was still widespread lack of knowledge about how the law works.

While journalists, lawyers and even inmates are frequent users of the open records law, anyone can take advantage of it.

Randy Skaggs, who operates an Elliott County animal shelter, may be the most vigorous seeker of records. He's filed as many as 500 open records requests since 1997 to each of the state's 120 counties on animal-control issues.

'Flush out the truth'

Kentucky's law allows citizens to "flush out the truth," Skaggs said. "It's a great law," Skaggs said. "It's a law that allows concerned citizens of the commonwealth to use it to find truth about their coun-

ty governments or their state government and the people that are charged with the operation of those entities."

The survey found nearly universal compliance with the law among city officials asked for the budget. When the response was a simple yes or no, nine out of 10 county judge-executives complied when asked for their travel-reimbursement records. School districts provided copies of the superintendent's employment contract more than 80 percent of the time when the response was yes or no.

But fewer than a third of jailers complied with requests for records.

In Montgomery County, Jailer Dwayne Myers and two employees backed auditor Dariush Shafa against a wall and demanded his identification.

"The whole situation was very intimidating," said Shafa, 20, a University of Kentucky student.

Several jailers said the uncommon request for the jail log — and the fact the auditors would not pro-

duce identification or say why they wanted to see it — raised concerns about the safety of inmates, authorities and the public.

"We don't want to take no chance with somebody we don't know," Myers said.

Such distrust of the public was a factor in the long debate over creation of the Open Records Act and its companion, the Kentucky Open Meetings Act.

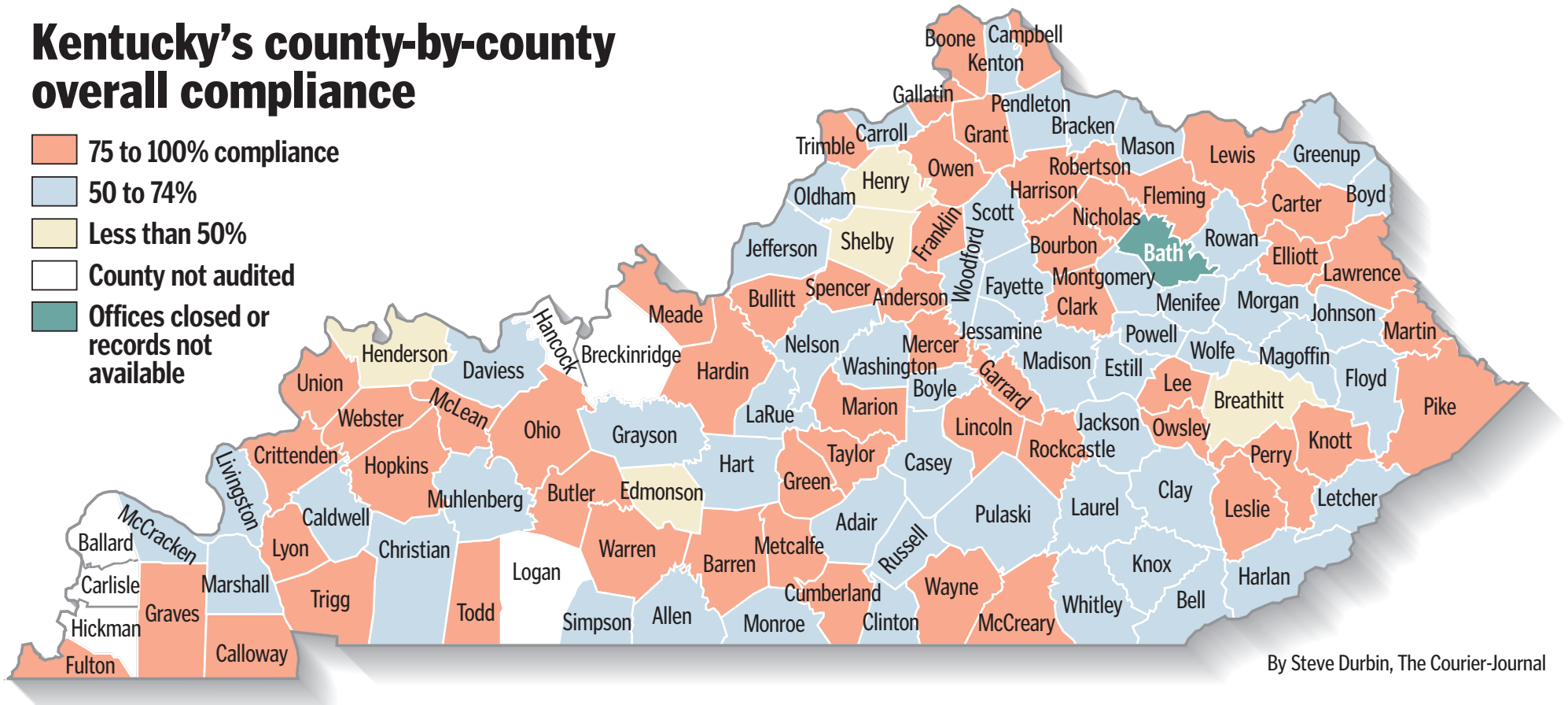
An open meetings bill failed in the 1972 General Assembly. But the Watergate scandal and cover-up unraveled, giving momentum to advocates of so-called sunshine laws across the nation.

The 1974 legislature passed an open meetings law, but then-Gov. Wendell Ford vetoed a bill broadening the open records law, saying it didn't have enough exceptions to protect records that should be kept confidential.

A new effort in 1976 created a

Kentucky's county-by-county overall compliance

- 75 to 100% compliance
- 50 to 74%
- Less than 50%
- County not audited
- Offices closed or records not available



By Steve Durbin, The Courier-Journal

YOURS FOR THE ASKING

Kentucky's open records audit

AUDIT | Open records sometimes aren't, survey of offices determines

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comprehensive open records law, but legal decisions slowly fogged the window of access.

In 1992, the law was overhauled, eliminating some exceptions.

The law is not just supposed to make access possible, but make it easy.

The law not only requires record keepers to respond to requests within three days, agencies are supposed to provide facilities where documents can be reviewed. And a series of rulings by the attorney general's office and the courts have said copies should generally cost no more than 10 cents a page.

Attorney general's role

The role of the attorney general's office, which is charged with reviewing appeals when records are refused, is generally considered a major advantage of Kentucky's open records law. Previously, a denial meant a citizen had to go to court to get the ruling overturned. Now a free request to the attorney general brings a decision that can carry the force of law unless it is taken to court.

There is an exception to the attorney general's purview over appeals. The General Assembly's Legislative Research Commission handles an appeal when the legislative branch denies a request for a public document. If the LRC upholds the denial, the requester appeals to Franklin County Circuit Court rather than to the attorney general.

"I actually think Kentucky is a very strong state in terms of the way it handles open records," said Rebecca Daugherty, freedom of information director for The Reporters Committee for Freedom of the Press, a nonprofit based in Arlington, Va., that provides free legal assistance to journalists.

"In most states you don't have an independent governmental body to hear these complaints. That's not to say we



By Ed Reinke, The Associated Press

Attorney General Greg Stumbo, right, has a staff of three assistants who oversee appeals under the Open Records Act. They are, from left, Amye Bensenhaver, Michelle Harrison and Jim Ringo. The law says that "free and open examination of public records is in the public interest."

consider all the rulings to come out of Kentucky favorable; but we think the system, the way it is set up, is a good one."

Still, some officials, especially in smaller towns, are leery of the scrutiny the law allows.

"You come into office and you really don't know these things," said Sylvia Lovely, the longtime chief of the Kentucky League of Cities. "We live in a very litigious society, and it's scary to them."

Little training on law

There is little or no formal training on the law available to local officials.

Amye Bensenhaver, an assistant attorney general long tasked with considering the appeals of open records decisions by government agencies, said

there is no duty assigned in the law to educate citizens or officials.

Bensenhaver said the attorney general's office has provided speakers to organizations such as the League of Cities and chiefs of police gathered for training at Eastern Kentucky University. There also is a pamphlet available called "Your Duty Under the Law," which explains the records law to officials.

For citizens, the LRC has a booklet describing the records and meetings laws.

There also is information available on the attorney general's Web site. A modest review of state government's various Web sites also finds hundreds of references to the open records law.

Legislative action

Rep. Derrick W. Graham, D-Frankfort, failed in 2004 to get legislative approval of a bill that would have required local government officials to sign off on having read the law. Graham has filed the bill again this year.

There also are some legislative efforts to add exemptions to the openness requirements, such as allowing governments to keep records and meetings secret if homeland security issues are on the table.

Boone County Administrator Jim Parsons said he would like to see the attorney general and the courts clear up some ambiguity in the records law, specifically dealing with e-mail messages and portions of personnel records open for public viewing.

"Overall I think the system works pretty well and the law is pretty fair on both sides," Parsons said. "People shouldn't have to spend money to go to court just to learn if they can get a record that they want."

Others think the system, even with its flaws, provides an adequate lens with which to peer into government.

Elbert Powell of Nortonville considers himself a "public watchdog" of government proceedings in Hopkins County. He recently sought the county's emergency plan for clearing roads after a December snowstorm.

"I'm just a regular Joe Blow citizen that's trying to keep their feet to the fire; and by me doing open records requests that's one way of doing it," Powell said.

HOW KENTUCKY COMPARES

Neighboring states have similar results

By Henry S. Ackerman
Associated Press

Open records audits done in Kentucky, Indiana, Ohio and Tennessee during the past year showed similar results with two notable exceptions — access to jail documents in Kentucky and access to superintendent's salary information in Ohio.

Kentucky's sheriffs and jailers stood out among the four states canvassed for access to law enforcement documents, according to the University of Missouri Freedom of Information Center's Web site.

Their rate of granting access to logs of prisoners, which are documents legally accessible under the Kentucky Open Records Act, was about 30 percent.

In Ohio, auditors were granted access to school superintendent salary information at about the same 30 percent rate.

In Tennessee, school document requests were granted more than 60 percent of the time. In Kentucky, when the response was a simple yes or no, the compliance rate was more than 80 percent, as it was in Indiana.

In Indiana, Ohio and Tennessee, citizen and press groups asked sheriffs or police in 2004 for crime incident reports and crime logs, which are similar but not identical documents to the jail logs sought in Kentucky.

In Tennessee, 65 percent of the local police agencies surveyed by the Tennessee Coalition for Open Government in November 2004 granted auditors' requests to view crime reports.

In Ohio, under an audit performed by half the state's daily newspapers, The Associated Press, the Ohio Press Associ-

ation and other access watchdog groups in April 2004, auditors were granted crime reports they sought 60 percent of the time.

In Indiana, sheriffs provided requested crime logs 60 percent of the time and incident reports 43 percent of the time during an August 2004 audit of state agencies by eight newspapers.

That was an improvement from a 1997 audit, in which only 43 percent of the crime logs and 22 percent of the incident reports were made available.

In statewide audits during the past three years, police and sheriffs were the least likely of public officials to comply with open records requests, according to Web documents posted by the University of Missouri Freedom of Information Center at foi.missouri.edu.

In each state where crime logs, crime incident reports or jail logs were requested, state laws held that the documents were open to the public.

Overall open record audit compliance rates were similar in Kentucky, Indiana and Tennessee and lower in Ohio.

In Kentucky, where the audit instructions allowed an agency to be deemed in compliance if it granted access or said it would grant access, auditors received a favorable response 67 percent of the time.

In Tennessee, access to requested documents that included city police reports, county sheriff's incident reports, school district and zoning board documents came 67 percent of the time.

In Indiana, requests for access to documents such as county employee salaries, crime logs and some court records were granted 67 percent

of the time.

In Ohio, however, where the access law requires officials to allow "prompt" inspection of nonexempt records, auditors received access or copies of documents only 53 percent of the time within two days.

Ohio's average was sharply affected by the denials of access to superintendents' salaries. Similar requests in Indiana, Kentucky and Tennessee showed stronger government compliance.

The Marion Brechner Center of the University of Florida tracks laws governing open records in 50 states and the District of Columbia, and a panel of professionals, lawyers and students rates them.

Based on a comparison of statutes, constitutions and court rulings on 57 different criteria, Indiana was considered a state with more open records access than Kentucky, which was followed by Ohio and Tennessee.

Examples:

► In Kentucky, Ohio and Indiana, any person may make an open records request. In Tennessee, only state citizens may do so.

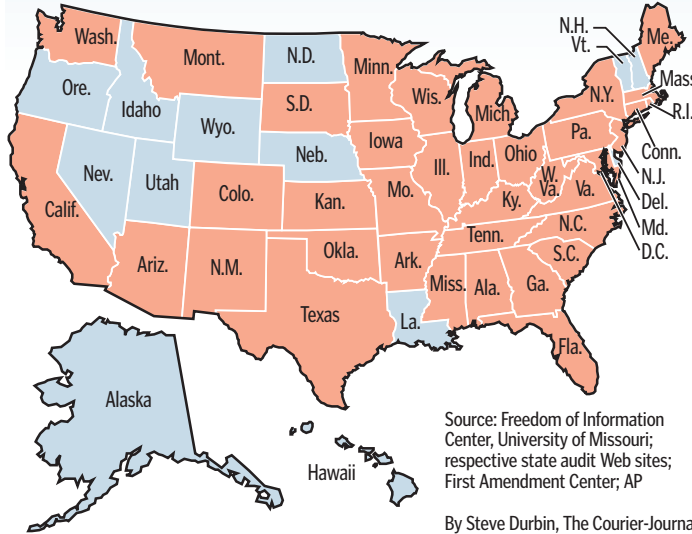
► In Kentucky, public agencies must provide "suitable" facilities for inspection of records. In Tennessee and Ohio, there is no such requirement, while Indiana officials must either provide the record or allow a person to use agency copying equipment.

Statewide public records audits have been on the rise. According to a survey by The Associated Press, citizen and press coalitions in 10 states were conducting them in 2004, with four other state groups planning audits this year.

States where audits have been conducted

Since seven Indiana newspapers pioneered the audit of the state's public record laws in 1997, audits have been conducted in 37 states. In several states, such as Indiana and Arizona, there have been two or more audits showing improved access. Before the Kentucky Open Records project, the latest was conducted by the Tennessee Coalition for Open Government.

- 37 states where press and other groups have conducted audits of open records laws either statewide or in substantially populated areas
- 13 states, including Delaware, and District of Columbia where no substantial audits have been reported



Audits in some states have improved public access.

After seven Indiana newspapers conducted the nation's first statewide audit, the governor created the office of Public Access Counselor to help resolve disputes.

After a Georgia First Amendment Foundation survey, the foundation worked with the Georgia Bureau of Investigation to set up a training program for police chiefs and sheriffs, said Hyde Post, president of the National Freedom of Information Coalition and an editor at the Atlanta Journal-Constitution.

After Tennessee's November audit, press Freedom of Information committees and the state's Municipal Association

began talks about training for police and other public officials on Tennessee's law, audit organizer Frank Gibson said.

Karen Davis, Indiana's public access counselor, said at least five sheriff and police associations asked her to give seminars on the law after Indiana newspapers made their second audit of jailers' compliance last August.

Davis said compliance with the law tends to relate to the relationship government workers have with the public.

"Librarians have an exemplary response to open records requests," she said, "and that's because they always are putting things out in the open for people to see. Sheriffs and jailers have not been as forthcoming."

Questions, answers on the law

The Kentucky Open Records Act requires that documents in the possession of a public agency — even those on computer — be made available to the public. Some records are exempt from the law, however, such as trade secrets, other confidential business information and records of ongoing investigations. Here's how the law works:

Q: What public agencies must have open records?

A: The law applies to all state and local officers and government agencies, including school boards, and any other body that is created by the state or local government or gets more than 25 percent of its money from state or local authorities. Examples are city councils, fiscal courts, state offices and municipal corporations.

Q: What is an open record?

A: All books, papers, maps, photographs, cards, tapes, discs, diskettes, software, recordings or other documentation, regardless of physical form or characteristics, that are prepared, owned or used in the possession of a public agency.

Q: From whom do you request access to open records?

A: The official custodian of records of a public agency is the chief administrative officer or any other employee who is responsible for maintenance, care and keeping of public records.

Q: How can you gain access to public records?

A: It is always best to make your request in writing to the public agency involved. You may make the request in person, by mail or by fax machine. Keep a copy of your request for your records in case a dispute arises later about whether the agency showed you all the documents you sought. The agency is required to allow you to inspect and copy the records if they are not exempt from inspection. It is to respond to your request within three working days of receiving it.

You may have to go to the agency's office to get the records, and it also can charge a reasonable fee for copying documents. For example, most state agencies charge 10 cents a page. You also have to pay postage if the records are mailed to you. If you make your request to a person who is not the record keeper, that person must give you the name and location of the person who is.

Q: What if your request is denied?

A: The public agency must say in writing what section of the law gives it the right to withhold the records. You can ask the state attorney general to review the denial. The attorney general has 20 days to issue an opinion to you and the agency. If the attorney general rules against you, you can file suit in circuit court.

The address for the Kentucky attorney general is: Office of Attorney General, Capitol Building, Suite 118, Frankfort, KY 40601. The phone number is (502) 696-5300.

The state attorney general's office receives about 300 appeals each year involving open records and meetings, said Vicki Glass, a spokeswoman for Attorney General Greg Stumbo.

Kentucky also has an Open Meetings Law, requiring public agencies to conduct open meetings in which they discuss or act on business.

If a public agency believes your repeated requests for open records are intended to disrupt the operations of the agency, it can refuse your request; however, there must be clear evidence that you have abused the right.

If you win an open records lawsuit, the court has the discretion to require the agency to pay your attorneys' fees and pay you up to \$25 for each day you were denied access to the record.

Q: What records are excluded?

A: You cannot see personal records that would be an invasion of a person's privacy; confidential records for scientific research; records that would give a competitor an unfair advantage, such as documents submitted in connection with loans or regarding prospective location of a business if not already known publicly; documents related to purchase of property by a public agency; academic tests for licenses; and law enforcement investigations before action is taken. If open and closed records are intermingled among records you request, the record keeper must separate the materials and allow you to see those that are open.

The Associated Press



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Kentucky's open records audit

CITIZEN WATCHDOGS

Some seen as pests but law is on their side

By Lee Mueller
Lexington Herald-Leader

LEXINGTON, Ky. — Court-house bureaucrats generally hate to see them coming.

They are ordinary citizens armed with perhaps the most potent weapon available to them without a lawyer: a Kentucky open records request.

After studying the Kentucky Revised Statutes with an intensity normally reserved for the Bible, they march into a clerk's office and slap down a newly crafted letter, demanding to see everything from fiscal court minutes to how many relatives magistrates have on the payroll.

If some elected officials privately dismiss these citizens as pests — Assistant Attorney General Jim Ringo calls them "self-appointed watchdogs" — the law is on their side and they know it.

"I don't believe they think I'm so much a nut as they think I'm a S.O.B.," said Randy Skaggs, an Eastern Kentucky animal-rights activist who, in 1997, gained the distinction of possibly becoming the first person to file open records requests in all 120 Kentucky counties.

Raising awareness

The documents he's obtained have helped him raise awareness on different animal-rights issues, he said. He said some of the information helped lead to minimum standards for animal shelters and prohibition of animal euthanasia by gunshot.

"It's through the usage of the open records law that you can flush out the truth," Skaggs said. "You can't always make the change come about that you're hoping will come from the findings, but at least you can expose the truth."

In Western Kentucky, Dick Bowman pried open records last year of a nonprofit foundation that had been secret for 40 years and won perhaps the largest settlement of an open records lawsuit in Kentucky history — \$5,700.

"They think I'm crazy ... but they take me seriously now," said Bowman, a 75-year-old systems engineer with a doctorate degree. "And, as they say around here, it's only going to get worse."

Local and state government agencies are accustomed to dealing with records requests from high-profile environmental or citizens groups, but Bowman and Skaggs generally represent an unconnected federation of grassroots Kentucky activists who use the law to tilt alone at their bureaucratic windmills.

Motives vary — some are obvious vendettas, others well-intended, state officials say —



By John Flavell, The Associated Press

Randy Skaggs, who operates an Elliott County animal shelter, has filed records requests in all 120 counties on animal-control issues. "It's through the usage of the open records law that you can flush out the truth," Skaggs said. "You can't always make the change come about that you're hoping will come from the findings, but at least you can expose the truth."

but the law requires all properly filed requests be taken seriously by everyone from the attorney general's office to the smallest agricultural district.

Bowman said he learned about the Open Records Act in Frankfort while trying to find legal leverage to see the financial records of the Kuttawa Re-development Foundation, a nonprofit agency Lyon County leaders formed in 1960 to help relocate the town when Lake Barkley was filled.

For years, foundation officials said they were a private agency. Bowman contended the Army Corps of Engineers provided more than 25 percent of the foundation's funds, making it a public organization subject to open records and open meetings laws.

Since Bowman arrived in Kuttawa in 1992, at least two lawsuits filed by other residents alleging self-dealing and financial skulduggery by the foundation have been dismissed in court.

Bowman has not been so easily dissuaded.

'Harassing us'

"He's been, I call it harassing us for two or three years," said

Kuttawa Mayor Lee McCollum, whose wife is on the foundation board.

"He digs," the mayor said. "He dug all the way back to 1948, but we started doing our homework and making it as difficult for him as we possibly could."

After Bowman filed a records request with the city and foundation in 2001, however, the board and city ultimately agreed in 2003 to allow him to inspect the foundation's records.

When Bowman showed up with his attorney at Kuttawa City Hall to begin their review, however, foundation officials at first wanted him to drive to another county to view their records, he said. Then city officials closed the building rather than allow him to continue, he said.

In his lawsuit in circuit court, Bowman alleged the city and the foundation violated the law by insisting upon vague conditions and restrictions before allowing him to see the records.

"We kind of messed up on following instructions," McCollum conceded.

Kuttawa officials grudgingly agreed with foundation directors to a mediated settlement of \$5,700 for Bowman's attorney's fees, which Ringo said could be the largest settlement of an open records lawsuit in state history.

Bowman filled two boxes with records, some of which he believes suggest wrongdoing.

"But I never got anybody to do anything," he said. "I've been running around here and in the Capitol up there, but nobody wants to pursue it."

Power of the law

Skaggs, 52, of Webbville, remembers the day he discovered the power of Kentucky's open records law. He was standing in his Elliott County home, surrounded by about 130 barking dogs.

Skaggs said after he founded a no-kill animal shelter called the Trixie Foundation in 1996, the number of dogs at his home doubled.

That made him wonder how many surrounding counties were complying with Kentucky's 50-year-old dog law that requires every county to hire a dog warden and provide access to an animal shelter.

At first, several county judges "totally ignored me," Skaggs said.

Then his attorney, in a phone call, told him about the open records law.

You don't have to be a lawyer or a journalist to use it, the lawyer told Skaggs. Anybody with paper, pen and a stamp can make almost any public agency sit up and pay attention, he said, and they often have only three days to do it.

"I knew I'd hit a gold mine," he said. "The law was on my side for a change, and it wasn't going to be up to the local yokels to enforce it. Incredible! The attorney general's office is the hammer because, in open records cases, their opinion has the force of law. Without them, it's all a waste of time."

Some local officials, of course, have their own opinions of citizens who use and, they say, abuse a valuable legal tool for exposing corruption, incompetence and negligence.

Request or witch hunt?

In Kuttawa, population 596, Mayor McCollum said he believes Bowman was treasure hunting.

"He knew this town had a

little money and he was going to get him some of it," McCollum said.

Bowman stiffly denied such a motive. All he wanted to find out was how the foundation operated and why it hadn't created more jobs in Kuttawa, he said.

It would not have cost Kuttawa or the foundation anything if they had not fought his records request, he said.

McCollum said he did not believe Bowman's request was reasonable — a sentiment echoed by some of Skaggs' critics.

"Demanding records from all 120 counties and telling judges they might go to jail, that's not going to get you anywhere," said Don Grubb, who owns a private animal shelter in Greenup County.

A single request is reasonable, Grubb said; 120 requests is a witch hunt.

"What this guy was trying to do was stick it in their ears and make these counties do what they normally don't do," he said. "You can't force government to do anything."

Associated Press writer Joe Biesk in Frankfort contributed to this report.

HOW THE AUDIT WAS DONE

Intense effort produced this report

By John A. Nelson
The Advocate-Messenger

DANVILLE, Ky. — For years the prospect of a public-records audit in Kentucky has been left to form in the minds of busy people. A year ago, the prospect re-emerged, and busy people decided to get busier.

At the Kentucky Press Association convention in January 2004, the membership was introduced to Gov. Ernie Fletcher as a diverse group with one constant — a commitment to open government. That was no passing comment.

A year later, we offer an assessment of the same commitment, or lack thereof, on the part of some local and state agencies.

The project began in a room full of college professors who had brought their students to the convention. There the idea

found great enthusiasm and the offer of assistance. We were assured of the necessary personnel, and we were off and running.

At first, KPA staffers and a handful of professionals formed the nucleus of a committee charged with developing a plan. The challenge was daunting. Not only was there the need to attempt audits in all 120 counties, but to do it on the same day, in the same way, in each county. Three state offices were audited on another day.

One more thing. The plans would have to be kept secret for the better part of a year.

The state was first divided into regions, and each region was assigned a coordinator — an editor within that region willing to secure auditors for each county and assist in their training.

The committee grew to in-

clude those editors and began to meet monthly, sometimes more frequently.

Among our numbers were some who had experienced audits elsewhere and others with contacts from which to draw advice.

That experience was invaluable in discussions about which agencies and which records to audit and especially in development of a training model for auditors, more than two-thirds of whom would be college students. Committee members used that model as they traveled the state to conduct the training.

A plan for collecting the data was the next obstacle. The result was an online form for the auditors to use in reporting their findings, which were compiled at the KPA's Frankfort office.

It all came together, despite the difficulty in settling on an au-



John A. Nelson is managing editor of The Advocate-Messenger newspaper and immediate past president of the KPA.

dit date. Imagine trying to schedule a single day around selected fall breaks, homecomings, conventions and school newspaper deadlines.

That day, perhaps fittingly, found the KPA board of directors at its annual retreat. The secret was so safe that even most board members weren't aware of the work being done.

To say the least, they are grateful and proud.

Our hope is that this collective effort will enlighten the public, the legislature and custodians of public records across the state, and that public access to government will be strengthened.

PROJECT PARTICIPANTS

Committee of participants in the Kentucky Open Records Project audit of public records held Oct. 20 and 21, 2004:

LEADERS

► Chairman, John Nelson, The Advocate-Messenger, Danville
► Co-chairman, Mike Alexieff, Daily News, Bowling Green

MEMBERS

► Liz Hansen, Ph.D., journalism professor, Eastern Kentucky University
► Hank Ackerman, Kentucky bureau chief, The Associated Press
► John Mura, The Courier-Journal, Louisville
► Tom Caudill, Lexington Herald-Leader

► Dena Potter, The Appalachian News-Express, Pikeville
► Benji Hamm, editorial director, Landmark Community Newspapers

► Tom McDonald, The Springfield Sun
► Donna Carman, The Casey County News
► Chris Poore, faculty adviser, The Kentucky Kernel
► Mike Reliford, The Daily Independent, Ashland

KENTUCKY PRESS ASSOCIATION STAFF

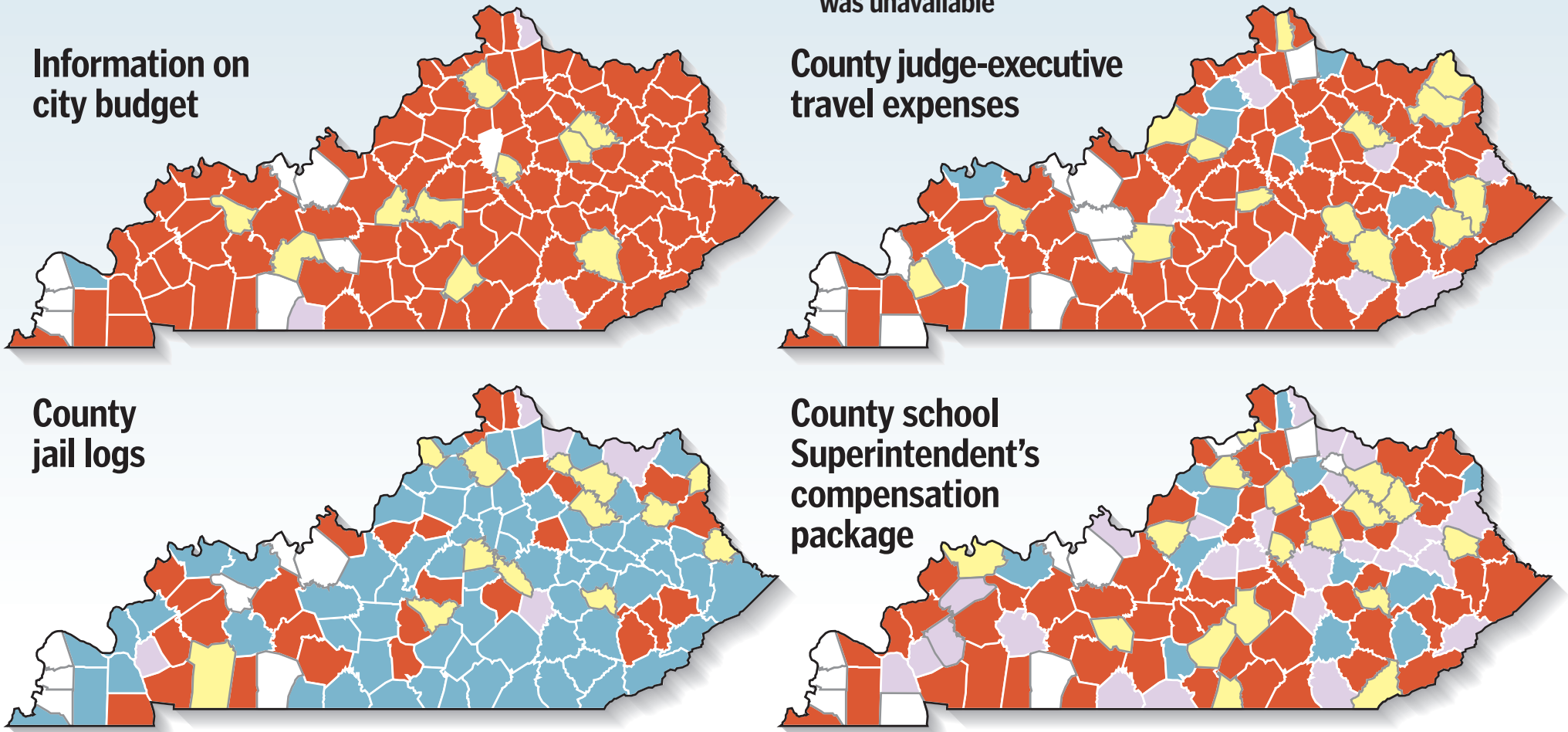
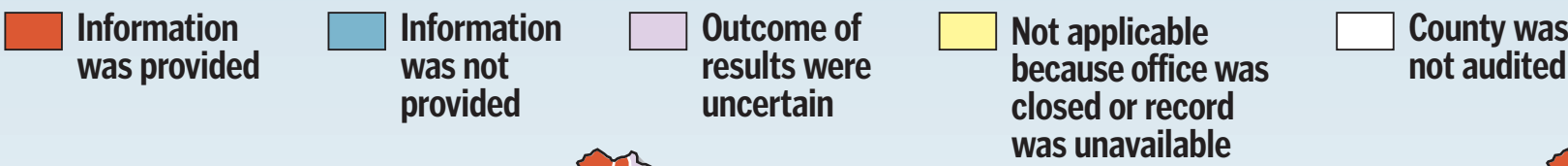
► David Greer
► Dana Lear
► David Spencer



YOURS FOR THE ASKING

Kentucky's open records audit

How open was each Kentucky county?



By Steve Durbin, The Courier-Journal

More officials comply with law when they're familiar with it

Cities have best rate; jail results are worst

Contributing to this story were Jim Hannah of *The Kentucky Enquirer*, Gregory A. Hall of *The Courier-Journal*, Herb Brock of *The Advocate-Messenger* and Bill Estep and Lee Mueller, both of the *Lexington Herald-Leader*.

Agencies that most often deal with public requests for information had the best compliance rates in the state's first public records audit.

Those who handle city budgets were the quickest to respond to auditors' requests for copies of that document.

Travel expense records of county judge-executives were easy to get in most cases, and public school superintendents, while a slightly suspicious lot, mostly offered up their contracts for inspection.

But one agency denied requests almost three quarters of the time. Guarding records as closely as prisoners, jailers in Kentucky turned down requests to see a list of inmates seven out of 10 times, the Oct. 21 audit showed.

The audit was organized by the Kentucky Press Association, The Associated Press, various newspaper and professional groups and

university student programs across the state.

John Nelson, immediate past president of the KPA and managing editor at *The Advocate-Messenger* newspaper in Danville, said names of people who have been arrested and are in jail are clearly a public record.

"In this country we don't arrest people or put them in jail secretly," he said.

The press association undertook the audit to find out how officials in different government agencies would respond to citizen requests for copies of various public documents.

More than 100 auditors, mostly college students and reporters for daily and weekly newspapers, were assigned to approach four agencies in 114 of the state's 120 counties. (There were not enough auditors to check the other six counties.)

In addition, a reporter for *The Associated Press* requested public records from the state attorney general's office, the Teachers' Retirement System of Kentucky and the Department of Fish and Wildlife Resources.

The auditors were told to act as though they had only a vague knowledge of the open records law to simulate the experience a citizen might have getting a record.

They also were told to provide their names if asked, but not to show identification or give a reason for wanting the records because the state's law does not require people requesting records to do so.

Citizens have a right to information about how their public officials and government are operating, said Jon Fleischaker, general counsel for the press association.

"The danger of that is secret gov-

ernment," Fleischaker said of decisions by officials to withhold public information.

Results vary widely

The audit results ranged from almost total compliance to little compliance.

Of the 112 city budgets requested covering fiscal 2004-2005, auditors were given documents in 98 instances. Only one city agency refused to comply. In 10 counties the audit was judged not applicable, in three cases the outcome was uncertain.

The first-quarter 2004 expense records of county judge-executives were made available in 79 of the 109 counties audited. Only in eight counties did county officials not comply. In 14 counties the audit was judged not applicable and in seven cases the outcome was uncertain. In one case, the wrong record was requested.

Compliance by school superintendents was not quite as good. Of the 110 counties audited, the salary and compensation package was provided in 56 cases and denied 12 times. In 17 counties, the audit was judged not applicable and in 25 counties the outcome was uncertain.

But of the 113 county jails or police agencies audited, only 28 gave auditors the jail log from the past 24 hours; 67 did not. In 13 counties, the audit was judged not applicable because the jail was closed or the record was unavailable.

In five counties, the outcome of the jails audit was uncertain. In those cases, a request form was completed or a self-addressed, stamped envelope was left but there was no assurance of intent to comply. For the purposes of the audit, a

county was judged in compliance if it indicated it would send the record.

Of the three state-level agencies audited, each complied with the law. Two agencies permitted immediate inspection of the record and one mailed the information within three days.

Jailers

Auditors were to ask for the log of people booked into the jail for the past 48 hours. In the case of counties with no detention facility, they were to ask police for a list of people transported to other jails.

Some jailers indicated they would provide the list of names to a reporter, but not just anyone who walked in; several said they would confirm if a specific person was lodged, but would not release a list of all inmates.

In Floyd County, an unidentified jail employee told auditor Rachel Stanley, a reporter with the *Appalachian News-Express*, she couldn't see the log, then walked away without giving her a chance to ask if she could talk to someone else, Stanley said.

Auditor Tim Travis, a student at Murray State University, reported that Crittenden County Jailer Rick Riley told him, "I'm not going to give you that information. See ya!"

Travis said he then told Riley that he had the right to see the requested information and Riley responded, "We will see about that."

Riley later said the two auditors who came to his small jail — which has no computer and no way to print out a list of inmates — were too pushy.

The jail has a list of prisoners posted on a board where the auditors could see it, Riley said, but they demanded that he provide a list.

James Kemper, former jailer in Franklin County and immediate past president of the Kentucky Jailers' Association, said jails keep several kinds of logs, some of which contain confidential information.

One problem with the KPA survey was that, in a number of cases, auditors were not specific enough about what they wanted to see, Kemper said.

KPA officials said one likely explanation for the low compliance rate by jailers is a lack of training.

Lisa Lamb, spokeswoman for the state Corrections Department, said new jailers must get 32 hours of training but the records law is not covered.

Shelby County Jailer Bobby Waits, current head of the jailers' association, said new jailers receive training soon after taking office. Jailers are then required to get 40 hours of training annually, he said.

Waits said the state Corrections Department approves the curriculum, and people certified through the department teach the classes. Jailers choose from a menu of sessions; open records training is available, but jailers are not required to take it, he said.

"There could be some that go through 10 years as jailer and never take that particular class," Waits said, adding, however, that the training and professionalism of jailers is significantly better than in the past.

Judge-executives

In contrast to the jail records, the first-quarter expense records of county judge-executives were uniformly easy to get.

In Muhlenberg County, "every-one was extremely cooperative,"

See **AUDIT**, Page 5, col. 1



YOURS FOR THE ASKING

Kentucky's open records audit

STATE OFFICES

Three agencies provide data with few hitches

By Henry S. Ackerman
Associated Press

FRANKFORT, Ky. — The Kentucky Open Records Project surveyed three state agencies in late October, and each complied with state law by furnishing the requested documents.

The attorney general's office supplied a year-to-date log of appeals filed by individuals or groups following denials of their open records requests by government agencies.

The Teachers Retirement System of Kentucky provided a list of its current investments and rates of return.

And the Department of Fish and Wildlife Resources produced a request log of 2004 hunting incidents and a list of citations of those caught hunting without a valid license.

The attorney general's office, which is charged with enforcement of the law and with providing legal opinions on appeals, re-

sponded in textbook fashion.

Within minutes, Amye Ben-senhaver, one of three staff attorneys who handles such cases, printed out a 48-page computer log with dates, names of parties, nature of the appeals, results of the appeals and how they were communicated to the parties.

The document showed there were 62 open records denials by the state offices and 147 denials by county, city or quasi-government agencies that were appealed through October 2004.

Of those appeals, 33 percent won access to the information. In 37 percent of the cases, the agencies' denials were ratified.

In 11 percent of the appeals, both the requester and the government agency won some element of the appeal, and 19 percent of the appeals were either withdrawn or denied because the requests were not made to the proper authority.

The attorney general's office was the only agency of the three

that complied with the law's requirement that open records regulations be posted in a place easily accessible by the public.

At the Teachers' Retirement System, chief financial officer Stuart Reagan responded to the request for investment and rates of return information after two co-workers asked why the auditor needed them and who he represented, information not required by law.

Reagan provided a bound pamphlet with data through June 30, 2004, on the spot. After asking for a hand-written Open Records Act request, Reagan said he would assemble current figures from their computer system.

The mailed answers appeared in the auditor's mailbox three days later, within the legal limits.

What was the investment total? As of October, just over \$12.9 billion. The rate of return on investments, 9.2 percent.

At the Department of Fish and Wildlife Resources, a receptionist quickly obtained the hunting incident information from an agency officer and allowed inspection within 10 minutes.

The document showed there were three incidents reported for the first 10 months of 2004.

The list of citations took longer. After 30 minutes, a department official who encountered the auditor in the waiting area asked if he was being helped. Seeing the woman who had been helping produce the records walking out to lunch, the official asked whether she could retrieve the information that afternoon.

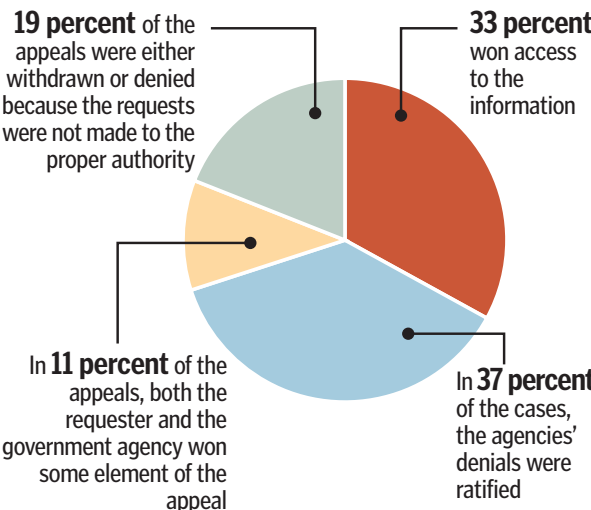
"We'll have to get it out of the computer," she told him. The official told the auditor the record would be mailed. The documents arrived within three working days.

Fifty-nine citations were listed.

Open records denials

A search of the state attorney general's records showed there were 62 open records denials by state offices and 147 by county, city or quasi-governmental agencies that were appealed from January through October 2004.

Of those appeals:



By Steve Durbin, The Courier-Journal

JUDGE-EXECUTIVES' EXPENSES

Many comply but wonder why the questions are asked

By Jim Hannah
The Kentucky Enquirer

FORT MITCHELL, Ky. — While most of those seeking public records from county judge-executives got their information, or were promised it in three days, many who sought the travel expense reports were quizzed on why they were asking.

Julie Satterly, editor of The Oldham Era, said that's what happened to her when she asked Trimble County Judge-Executive Randy Stevens for his expense records.

"He asked me what I was looking for and why, and I asked him if I was required to answer," Satterly wrote.

"He said 'no,' that the records were open, but that he was just interested in why I would like to inspect travel reimbursement information.

"I told him I was just interested."

Satterly said Stevens didn't require her to file a written request or pay for copying fees,

both of which would have been legal.

"He gave me the report," Satterly said. "I thanked him for cooperating and, as I walked out the door, he said, 'I'm still bewildered as to why you want this information.'"

In Fayette County, auditor Ben Roberts, a 21-year-old University of Kentucky student, said he was referred to a couple of different county offices before being told the expense information was in Frankfort.

"The people were cooperative," he said, "but they said the information I was seeking was not in their office."

Some county executives, such as Todd County's Kent Knight, told auditors they paid for all expenses out of pocket and were not reimbursed. Such responses were seen as complying with the auditor's request for records.

Nathaniel Kissel, a reporter for The Oldham Era, said Henry County officials were willing to show him the county's expenses, but said they didn't break out the

judge-executive's into a separate record.

"When I went to the judge's office and asked to see how much money had been spent by the county on the judge's travel, the clerk told me that the records weren't broken down that way, and that the money comes from the state," Kissel said.

Kissel said he eventually spoke with Judge-Executive John Brent directly.

"He eventually told me \$150 had been spent on gas and that he drove his own truck and paid for his own meals, but I never got to see quarterly expense records," Kissel said.

When reached by a reporter after the audit, Brent said he thought telling the auditor the county had reimbursed him for \$150 in gas satisfied the request.

"I understand the importance of government accountability and open records," he said. "I had no intention not to follow the law.

"I thought we had answered all of the (auditor's) questions."



By Darren Pike, Trimble Banner via The Associated Press

Trimble County Judge-Executive Randy Stevens, who addressed a Democratic Party rally in October, provided the requested travel expense records after asking an auditor why they were being sought.

AUDIT | Officials' experience with Kentucky's records law improves willingness to comply

Continued from A4

wrote auditor Amie Powers, a student at Murray State University. "The county clerk told me where to go and then came by a few minutes later to make sure I had found the correct office."

Stephanie Hornback, a reporter for The Leitchfield Record, had a similar experience in Nelson County.

"The workers were very polite and apologized that they didn't have the travel expenses broken down specifically, as far as they knew," she said. "I was given a chair to look at the records and told to take as much time as I needed."

Still, not all counties provided the requested records.

Christian County told an auditor it didn't track the expenses of its top elected official.

Henderson County's judge-executive never returned a message asking for his expenses.

And Fayette County, the state's second largest, said any such records are stored in Frankfort, the state capital.



By Charles Pearl, The State Journal via AP

The other counties that didn't comply were Bracken, Breathitt, Caldwell, Henry and Shelby.

Christian County officials told auditor Rob Cotthoff, a Murray State University student, that "the judge paid for his own gas, and was helped out by the county for other things, like his car, but they didn't keep any records they could show me."

Christian County Judge-Executive Steve Tribble didn't return repeated phone messages for comment.

James Kemper, immediate past president of the Kentucky Jailers' Association, said jails keep several kinds of logs, some of which contain confidential information. In a number of cases, he said, auditors were not specific enough about what they wanted to see.

Cities

The best compliance was seen in city government offices, which had almost a perfect record of letting auditors see their budgets.

Joberta Wells, a freelance reporter and columnist for the Casey County News in Liberty who audited Cumberland County, said the Burkesville mayor and clerk were not only cooperative and forthcoming and also efficient and knowledgeable.

"I asked for a copy of the city budget and I quickly obtained it," Wells said. "They invited me to ask any questions after I had read it. The experience I had with the city budget was what every citizen should experience when they're looking to see public documents."

Only a handful of auditors said they had to give their names, provide identification, state the reason for their requests or sign a form to see the budget.

Eighty of the auditors said they were shown the budgets in 15 minutes or less. Just one reported that any information in the budget had been omitted or removed, and only 12 had to pay a fee for copies.

The former Burkesville city clerk said providing public records is a no-brainer.

"We don't get many requests to see or get copies of our records, but, when we do, we provide them as quickly as possible," said Star White. "Mayor (Mike) Irby and I and all other city employees work for the public and the records we keep be-

long to the public. It's that simple."

Superintendents

School superintendent's offices were less forthcoming but did comply with requests for the superintendent's salary in roughly half of the counties surveyed.

Barren County required an auditor to put the request in writing, but said it would then be made available.

Superintendent Jerry Ralston said that, while the request was unusual, the district's administrative assistants were aware of open records policy.

"The more open we are and the more we communicate, the more trust we build," Ralston said.

In Oldham County, auditor James Mulcahy, editor of The Shelbyville Sentinel News, was sent to the personnel office, where he said he was told that he would have to show credentials and state why he wanted to see the records. Neither are requirements of the law.

Because of that, the county was judged to be not in compliance. Oldham County Superintendent Blake Haselton, who was not in the office at the time, said he believes in open records, but doesn't think it means that the record must be handed over immediately.

"We don't have staff that stop everything they're doing to deal with this kind of issue," he said. Haselton said no record was supplied because the auditor did not leave a written request.

The law allows public officials to require written requests for documents. However, the spirit of the law is that public officials should release records quickly, without requiring a written request or waiting three days if the items being requested are public and available, Fleischaker said.

Haselton questioned the audit's methodology, saying a call in advance or making an appointment would be reasonable and would have been a fairer indication of how records requests are handled.



YOURS FOR THE ASKING

Kentucky's open records audit

PRISONER LOGS

Jails, police guard information

Safety, privacy concerns cited by the officials

By Bill Estep and Lee Mueller
Lexington Herald-Leader

LEXINGTON, Ky. — Many jailers and jail employees across the state showed a lack of knowledge of the state Open Records Act, failing or refusing to release information that is clearly public, auditors found.

In Montgomery County, auditor Dariush Shafa said Jailer Dewayne Myers and two employees backed him against a wall and demanded his identification.

After Myers refused to give him a copy of the prisoner log, Shafa said he showed the jailer a copy of the open records law, and Myers responded, "That rule doesn't apply to us."

"The whole situation was very intimidating," said Shafa, a 20-year-old University of Kentucky student.

Myers said he did not intend to intimidate Shafa and did not say the records law does not apply to the jail.

There would have been no problem providing a list of people in the jail if Shafa had asked for that, Myers said. However, what Shafa requested was a copy of the daily activity log, which includes confidential information, such as what medication inmates get, Myers said.

The open records law outlines information that public



Auditor Dariush Shafa said Montgomery County Jailer Dewayne Myers and two employees demanded his identification.

agencies are allowed to withhold — such as Social Security numbers that would clearly violate an individual's privacy if released.

If the public record being sought includes private information, the agency is to black out that information and release the rest of the record.

Several jailers said the uncommon request for the jail log and the fact the auditors would not produce identification or say why they wanted to see it raised concerns about the safety of inmates, authorities and the public.

Sharon Buckley, a captain at the Barren County Jail, said, for instance, that someone who wanted to attack an inmate could use the list to find out when that person was due in court, then show up and perhaps place an officer in jeopardy.

"You want to make sure the safety's there. The last thing you want to do is put anybody at risk, as well as the community," Buckley said.

Said Myers: "We don't want to take no chance with somebody we don't know."

Morgan Caldwell, a 20-year-old journalism student at Eastern Kentucky University who went to Morgan County as part of the audit, said West Liberty Police Chief James Keeton



By Mark Cornelison, Lexington Herald-Leader

"We don't want to take no chance with somebody we don't know," Jailer Dewayne Myers said, explaining why an auditor's identification was sought. He said he did not intend to intimidate auditor Dariush Shafa and did not say the open records law does not apply to the jail.

said she couldn't have the list of prisoners transported to jail without providing identification, then took down her car license number as she left.

Caldwell said the black Hyundai she drives is registered to

her mother, who got a call from Keeton wanting to know if she had a daughter and what she looked like.

"She called me thinking 'Oh, my God, my daughter's been in a wreck,'" Caldwell said.

Keeton said Caldwell's refusal to provide identification raised a red flag about whether she wanted the information for an illicit purpose.

Keeton mentioned the potential for blackmail, or a wife try-

ing to find out whom her husband had been arrested with, he said.

"You don't know if you're giving somebody some information to maybe use it against somebody," he said.

SCHOOL SUPERINTENDENT CONTRACTS

Requests spark some questions and concerns

By Gregory A. Hall
The Courier-Journal

The word got out when open records auditor Stevie L. Daugherty asked for a copy of the Taylor County school superintendent's contract.

Employees at Gary Seaborne's office asked Daugherty, a journalist with the Lebanon Enterprise, who she was and why she wanted the contract, she said. With Seaborne not available, Daugherty left a written open records request and headed home to Marion County.

Within a half hour, Daugherty said, she got a call from Marion County Superintendent Roger Marcum, whom she knows, asking about her Taylor County request.

Marcum told her he'd been called by the Taylor County superintendent's office, Daugherty said.

Seaborne said he didn't make the call to Marion County, but acknowledged that someone from his district could have. In his 23 years as superintendent, Seaborne said, he's never been asked for a teacher's or superintendent's contract.

"It was a little bit myste-

rious, to say the least," he said. Marcum said he was not asked to call Daugherty, but did so out of curiosity.

Superintendents generally are paranoid about their jobs, he said. The fact that Daugherty wasn't a resident of the district didn't matter in the decision to fulfill her request, Seaborne said. The person could have "come from Czechoslovakia."

The questions Daugherty faced were typical.

In Allen County, Western Kentucky University student Kat Wilson put her request in writing after talking to three people, including Superintendent Larry Williams. Wilson told Williams she was curious about his contract and thought that it was available to the public. She said Williams seemed agitated but told her how to write the request.

Williams said he had hoped that, because he told Wilson how to write the request, "common courtesy" would mean she'd be more forthcoming. "When people are loosey with their answers, that causes you to wonder," he said.

In counties that were judged to have not complied with the request, some superintendents



File photo by Matt Pedigo, The Citizen-Times via AP

"When people are loosey with their answers, that causes you to wonder," Allen County Superintendent Larry Williams said of his experience with the open records auditor.

said that a lack of communication was a contributing factor.

In Breathitt County, Superintendent Ronald Eden said he wasn't in at the time of the records request, when his secretary told the auditor to check a state Department of Education Web site that lists superintendents' salaries.

Had he been there, Eden said, the request would have been granted.

"We're not trying to hide anything," he said.

In Daviess County, auditor John Perkins, also a WKU student, reported being told that Superintendent Tom Shelton's contract was confidential.

Shelton said later it probably was a communication breakdown. The staff meant that they did not have the contract, he said.

"To my knowledge, the

board chair and I are the only ones who have a copy of it," Shelton said, adding that he wasn't in the office at the time of the request.

In Bracken County, Superintendent Tony Johnson questioned whether auditor Stan Schulte, a Northern Kentucky University student, wanted his job, Schulte said.

Johnson said he probably did make the comment about his job, but said he was joking.

He mailed the contract a couple of days later, Johnson said.

The Bracken County district's open records policy doesn't deal with the procedure of handling a request, he said, which will be addressed when the district revises its policies next year.

"This will be one that we'll flag," he said.

CITY BUDGETS

Officials quick and courteous with records

Responses across state please auditors

By Herb Brock
The Advocate-Messenger

DANVILLE, Ky. — Most of the auditors who sought city budgets during the open records audit complimented the mayors or clerks they encountered, with many praising the quick responses.

"By far the most efficient and easy stop of the day," Oldham Era reporter Nathaniel Kissel said of his audit of the Eminence city budget in Henry County.

"I walked in and no questions. They gave me a copy of the budget and they made copies for me without question and didn't charge me for them."

Renee Deemer, a Western Kentucky University student who audited public records in Barren County, had the same experience in Glasgow.

Glasgow City Hall clerks



Auditor Sarah Lynch said the Ashland mayor's secretary asked who she was but then provided a copy of the city budget at no cost.

"were some of the most polite and efficient people I have ever met," Deemer said. "Everyone we spoke with was incredibly nice and efficient. We were given the document and without any hassle."

Some auditors were asked to provide identification or answer questions about why they wanted the information.

Sarah Lynch, an Ashland Daily Independent reporter who audited public records in Elliott County, said she was asked who she was by the mayor's secretary.

"I told her who I was, that I was just needing information and that I knew (the city budget) was an open record and could I please see a copy of it."

The mayor then asked her if she was doing a school project, Lynch said. Lynch said she answered "no" and was provided a copy of the budget at no cost.



YOURS FOR THE ASKING

Kentucky's open records audit

JOURNEY TO OPENNESS

Many struggled for years to win, maintain access

By Al Cross
Institute for Rural Journalism

WHITESBURG, Ky. — When Tom Gish and his wife, Pat, moved to his hometown and bought the local newspaper 47 years ago, they thought part of their job was to attend meetings and examine records of local government agencies.

That was the normal course of business for the Gishes, who had been reporters for daily newspapers and wire services in the Bluegrass. But as owners of The Mountain Eagle, they found that Letcher County Fiscal Court conducted business differently.

“They passed resolutions saying we were not privileged to be present,” Tom Gish said.

The Eagle, which he still publishes, insisted on its right to stay. It never got thrown out, and it helped fight for the state's first freedom of information law.

Today, according to Gish and others on both sides of government-access issues, Kentucky's public officials are much more open — thanks largely to laws that opened their meetings and records to examination by the public, including journalists.

“There is a general, growing recognition that the only way to get things done in a community is that there be transparency and that people know what's going on,” said Sylvia Lovely, executive director of the Kentucky League of Cities since 1990.

But it wasn't until the laws were strengthened in 1992 that “we really got their attention,” said David Thompson, executive director of the Kentucky Press Association.

Since then, Thompson said, “There's been a little backsliding. Some of the agencies have tried to come up with ways to get around the laws.”

Of most concern is not any particular weakness in the laws, Thompson said, but an apparent decline in citizens' interest in open government, which the press association and other groups are trying to revive.

Battle joined in 1958

The push and pull over freedom-of-information laws took center stage in the public arena in 1958, when The Mountain Eagle and other weekly papers, such as the Hickman Courier and the News-Journal in Campbells-ville, were joined by dailies in pushing what an editorial in The Courier-Journal called “right to know” legislation.

“These and other county newspapers have fought hard against local manifestations of a secrecy that has become a nationwide nuisance,” the Louisville paper wrote, referring to problems in other states and the federal government.

The papers and their legislative allies succeeded in passing a law declaring most records to be open to “interested persons,” those who could maintain standing in a lawsuit.

But a court decision applying the law to local governments wasn't universally observed and required legal action to enforce. The state still had no statute guaranteeing that meetings of official government bodies would be public.

Events outside Kentucky's borders helped government-access advocates. After an open-meetings bill failed in the 1972 General Assembly, the Water-gate scandal and cover-up began, focusing national attention on secrecy in President Richard Nixon's administration and giving momentum to advocates of so-called “sunshine laws” nationwide.

The 1974 General Assembly passed a broad open meetings law, but Gov. Wendell Ford vetoed a bill broadening the open records law, saying it didn't



Tom and Pat Gish bought The Mountain Eagle in Whitesburg, Ky., 47 years ago and immediately began fighting to make local government more open. They also helped push for freedom of information statewide. Resulting laws have opened meetings and records to examination by the public.

have enough exceptions to protect records that should be kept confidential.

More work to do

Ford's move exposed differing attitudes in the Kentucky Press Association about the press's place in the public arena.

The president and others within the KPA endorsed the veto, without notice to the chairmen of the group's board and its freedom-of-information committee, saying they thought the bill was to have included such exceptions.

One of the freedom-of-information chairmen was Al Smith, a publisher of weeklies in Russellville, Leitchfield, Morgantown and Cadiz, and now host of KET's “Comment on Kentucky.”

Smith, who would later become KPA president, said Barry Bingham Jr., then publisher of The Courier-Journal, helped him immensely by asking the newspaper's lawyers and Bill Cox, an assistant to the paper's executive editor, to work on the records law. It passed in 1976.

“Watergate gave the press a certain amount of additional respect and muscle with the politicians,” Smith said. But “The Courier-Journal had as much influence as Watergate did in Kentucky, if not more.”

‘Feeling its oats’

The chief author of the open records law, and its 1992 revisions, was Jon Fleischaker, a Louisville attorney who has long represented The Courier-Journal. He said public unhappiness over the Vietnam War and a resulting distrust of government also spurred passage of the laws in the



1970s, as did U.S. Supreme Court decisions expanding press freedoms.

“The press was feeling its oats,” Fleischaker recalled. “Press freedoms were at their high-water mark.”

He said the records law was modeled after the federal Freedom of Information Act, but was stronger, with a shorter maximum response time to requests for records — three days, not 10 — and streamlined appeals to the state attorney general.

The records law gave attorney general's opinions on such questions the force of law.

That requires officials who want to fight a ruling to go to court, rather than putting that burden on the person seeking a record.

Meanwhile, court cases and attorney general's opinions revealed or created loopholes, such as an opinion that allowed an agency to withhold a record if the release would “harm the agency,” raising doubts that such re-

ords as police citations would remain public.

Revisions in 1992

The KPA, which had been reluctant to risk asking for changes in the laws for fear that the legislature would weaken them, eventually drafted revisions. The effort failed in the 1990 General Assembly, partly because some legislators worried that increasingly available electronic access to records would lead to invasions of privacy.

But the legislature created a task force to examine the issue, and the most vocal skeptic, then-Rep. William Donnermeyer, D-Bellevue, came around to journalists' points of view that the law should be strengthened.

Since the 1992 revisions, most of the action on government access has been in the attorney general's office or in court — so much that the records law and decisions on it take up 138

pages in one version of the Kentucky Revised Statutes.

Some unpublished court rulings have had major impact, such as the recent one that the University of Louisville Foundation had to reveal the donations it received from corporations and foundations.

The disclosure of individual donations is still up in the air because of questions about privacy, which Fleischaker said is the fastest-growing area of access law.

“There's a much increased sensitivity to the concept of privacy,” a concept that is constantly being refined and often expanded, he said.

“Computer access to information scares people,” Fleischaker said. “People are concerned, and courts are concerned, that with computers there are a lot more people out there who are just voyeurs, seeing what they can get.”

With privacy questions rising, along with journalists' concerns that public support for access laws may be fading, the press association and other groups have formed Kentucky Citizens for Open Government, to create a chorus of voices for legislators and other officials to hear.

“When we have gone for something to open government, some committee members would say, ‘This seems to be a press issue, because there aren't any citizens there to testify on it,’ ” Thompson said.

“What we can do is show public officials at all levels that it's not just a media issue.”

Al Cross is interim director of the Institute for Rural Journalism and Community Issues at the University of Kentucky. He previously reported for The Courier-Journal, most recently covering politics.



YOURS FOR THE ASKING

Kentucky's open records audit

GOING TO COURT

Sometimes suits needed to pry information loose

By **Bil I Estep**
Lexington Herald-Leader

LEXINGTON, Ky. — It's been said that the price of freedom is eternal vigilance. For newspapers and the public, one thing that means is sometimes having to fight in court to defend First Amendment freedoms and gain or maintain access to public records.

There have been lawsuits related to a wide variety of open records in Kentucky in recent years, such as information from crime reports; internal investigations of police officers sus-

pected of wrongdoing; efforts by a city to hire a developer for a multimillion-dollar project; and the settlement paid in a fatal university dormitory fire.

One recent high-profile case involved The Courier-Journal's effort to get access to records of donations to the University of Louisville Foundation and an academic center named for U.S. Sen. Mitch McConnell.

The newspaper filed suit in 2001 after U of L rebuffed requests for information on donors to the foundation. The newspaper has won several rulings, getting information that showed

donors to the McConnell Center for Political Leadership included tobacco, energy, defense and other companies whose business can be affected by legislation over which McConnell, R-Ky., can have great sway.

Larry Noble, executive director of a Washington-based watchdog group called the Center for Responsive Politics, said it's important for such information to be public because the companies may be making donations to try to win political favor — and doing so in a manner not covered by campaign finance and disclosure rules.

“The concern in these cases is whether or not the corporate contributors are hoping to gain some access or buy access” to a member of Congress, Noble said.

Citizens also take part in lawsuits over open records. One such case now in court involves efforts by retired lawyer Norman Lemme of Bullitt County to get records from the Kentucky Baptist Homes for Children, a church-affiliated organization that provides foster-care and other services and gets much of its money from the state, Lemme said.

After the organization moved to open a facility for troubled youths near Lemme's home, he won a ruling from the attorney general's office that the organization should disclose records to him.

But the organization sued in circuit court, maintaining it is a private agency exempt from the disclosure law.

The case could have wider impact because it involves the issue of when nongovernmental agencies should be considered public because they get public money.

Lemme is footing the bill to

pursue the case — an expensive hurdle that would keep many citizens from fighting records cases in court when agencies balk at disclosure, he said.

Mark Neikirk, managing editor of The Kentucky Post in Covington, said it can be costly and time-consuming to go to court over records, but that sometimes it's necessary as newspapers pursue information to keep the public informed.

“Court in my view is the last resort because of the time and expense, but there are going to be circumstances in which it needs to be done,” Neikirk said.

ELECTRONIC AGE

E-mail pleas may go unanswered

By **Jack Brammer**
Lexington Herald-Leader

LEXINGTON, Ky. — Under Kentucky law, there are three ways to request records of state and local government offices: by mail, fax or personal delivery.

You can ask for them by e-mail, but you may be disappointed.

Public agencies in Kentucky are not statutorily required to respond to open records requests sent by e-mail, said Amye Bensenhaver, an assistant attorney general who considers appeals of denied requests for open records.

“You can try it, but you may not get what you want,” she said. “It's really left up to the individual state or local government agency to decide if they want to handle your open records requests electronically. They do not have to do that.”

The statute requires that the request have a signature with the name printed below, and she said she isn't sure how that can be satisfied through e-mail.

As part of a statewide public records audit, Kentucky Press Association employees sent e-mails requesting public records

to the athletic and police departments and to foundations at the eight state universities: Louisville, Kentucky, Morehead State, Western Kentucky, Kentucky State, Eastern Kentucky, Murray State and Northern Kentucky.

Of those 24 requests, eight did not draw a response, one was denied and one was referred to a different office.

But four of the eight provided copies of their foundations' budgets.

Five of the eight police departments complied with the request for copies of assault reports on campus from July 1 through the date of the request in October 2004.

And five of the eight athletic departments furnished the requested copy of the athletic director's contract.

Some people are surprised to learn that even e-mail may be subject to open records requests, Bensenhaver said. Case law shows that electronic mail certainly is discoverable under actions brought against the government, she said.

States “are all over the map” in how they handle e-mail requests for open records, said Charles Davis, a journalism pro-

fessor at the University of Missouri and co-chairman of the National Freedom of Information Act Committee for the Society of Professional Journalists.

“Some states like Florida, North Carolina and New Jersey are very progressive,” he said. “More and more states are allowing electronic requests for information.”

Bensenhaver said she was not aware of any pending effort to try to update Kentucky's Open Records Act to require public agencies to deal electronically with records requests.

A pitfall in using e-mail to seek public records is that agencies do not always know if a person who sends the e-mail is a valid requester, Bensenhaver said.

To prevent computer viruses from spreading, practically every employee in the private or public sector is advised not to open an e-mail if the sender is not known.

A good idea when sending an e-mail request is to accompany it with a phone call, Bensenhaver said.

Dana Lear of the Kentucky Press Association news bureau in Frankfort contributed to this report.

Sample open records request

John Smith, City Clerk
Municipal Building
Anytown, Kentucky 40999

Dear Mr. Smith:
I respectfully request to inspect the following records:

1. All contracts that the city has with Home Wrecker Service;
 2. Any correspondence between the mayor and the Home Wrecker Service since January 1, 1990.
- If these documents are temporarily unavailable, please inform me of the earliest date when I may inspect them.

I also request a copy of the contract between the city and Home Wrecker Service dated October 14, 1992. I understand that I will have to pay the actual cost of making this copy.

Thank you for your attention to this request.

Sincerely,

Jane Q. Citizen

Sample open records appeal

Attorney General
Capitol Building
Frankfort, Kentucky 40601

Re: Open Records Appeal

Dear Attorney General:

I am appealing the refusal of the city clerk of Anytown, Kentucky, to allow me to inspect records in his possession. A copy of my written request is attached. A copy of the clerk's response denying my request is also attached.

The clerk claims that the records are not open records because they are preliminary recommendations. I do not agree because the records I request to inspect are binding contracts between the city and a wrecker service.

Sincerely,

Jane Q. Citizen

FREQUENT FILINGS

Requests show how interests vary

By **Henry S. Ackerman**
Associated Press

Requests for access to Kentucky's government records under the Open Records Act run the gamut of personal, social, political and business concerns.

People seek everything from police reports to divorce documents, from documentation on a city's payment of attorney's fees to records of sewer districts.

Thousands are submitted every year and to all levels of government — city, county, state and government-funded entities. Of those that are denied, only a small number are appealed.

“We see only the tip of the iceberg of all requests,” said Amye Bensenhaver, an assistant attorney general whose office handles up to 350 appeals annually.

Here are some examples of the numbers and types of public information requests received by eight state and local government offices surveyed by The Associated Press:

► Department of Corrections — Inmates in Kentucky's prisons or their families asked for background documents on inmate criminal hearings and a wide range of other information in 13,835 open records requests last year, said Chris Gilligan, a spokesman for the Justice and Safety Cabinet.

Inmates appeal decisions more frequently than other people, according to the attorney general's office.

► Kentucky State Police — There were more than 990 requests during 2004, said Roger Wright, assistant general counsel in the Justice and Safety Cabinet, which handles requests to state police.

Many are for accident reports and blood alcohol levels on people arrested after traffic accidents or for driving under the influence. They also often come from product safety groups and from the Crime Victims Compensation Board, he said.

► Transportation Cabinet — Spokesman Mike Goins said the cabinet received more than 830 records requests in 2004. Many sought commercial drivers' histories and documents dealing with traffic signal timing. Half the requests come from private citizens, the rest from attorneys and the media, he said.

Attorneys frequently ask for data on trucking companies whose vehicles are involved in accidents. Goins said 99 percent of the requests are fulfilled.

► Department of Finance and Administration — Spokeswoman Jill Midkiff said 590 requests were received in 2004 through Dec. 17, and 74 of those were from the media. Many were for information on field

bidding for contracts and construction projects, largely from unsuccessful bidders, she said.

► Department of Fish and Wildlife Resources — Coal companies ask for the department's comments on Clean Water Act reports, while workers compensation officials use open records requests to make sure a worker out of work on a claim hasn't taken a license and killed a deer, said Scott Porter, the department's general counsel. Porter said the agency did not have a count of 2004 requests.

► Education Cabinet — Department spokesman Stan Lampe said there were 74 records requests received at the department level. The figures did not include numbers handled by universities, which respond to their own.

► Louisville Metro Police — Spokeswoman Alicia Smiley said the department receives from 600 to 800 requests annually, ranging from people seeking accident reports or neighborhood crime rates to those seeking tapes of 911 calls.

► Lexington-Fayette Urban Government — Lexington received about 3,700 requests last year, said Mike Sonner, a senior attorney for the city's department of law. Of those, about 1,500 were made to the police department, 900 to the Fire Department, and 300 to the Division of Community Corrections, he said.



YOURS FOR THE ASKING

Kentucky's open records audit

A CASE HISTORY

Bowling Green man persistent in pursuit of payments by city

By Jim Gaines
Daily News

BOWLING GREEN, Ky. — Al Baker wanted some answers.

The Bowling Green resident wanted to know what his elected officials were saying to each other in fall 2003 about a rumored secret financial deal. So he decided to read it himself, in e-mails and memos on the subject between city officials.

"I contacted my son the attorney, and I asked him how we would proceed to get those records, to see just what was going on," Baker said.

The answer: File a request under the Kentucky Open Records Act.

"The General Assembly recognized that the free and open examination of public records is in the public interest," according to "Protecting Your Right to Know," a pamphlet published by the attorney general's office.

The act defines "public agencies" as:

- State and local government offices, departments and legislative bodies.

- County and city governing bodies, school district boards, special district boards and municipal corporations.

- State or local government agencies created by statute or other legislative acts.

- Agencies that receive at least 25 percent of their money from state or local authorities.

- Agencies created and controlled by public agencies.

- Interagency bodies of two or more public agencies.

Information on actions of any of those bodies is available through a standard request process. It doesn't take a lawyer; many agencies have a simple form, or a plainly worded letter to the agency's official record custodian will suffice.

A request can be hand-delivered, mailed or faxed.

It's important to describe the records as specifically as possible, said Ashley Pack, of the Louisville firm of Dinsmore & Shohl. "I would also make sure that you're describing records, and not general information."

Records can be looked at during regular office hours, or the governmental body can be asked to mail copies of precisely described records.

The agency has to answer citizens' requests in writing within three business days. If any part of the request is rejected, the agency must explain why.

Al Baker wanted to see two types of records: paper and electronic. His son, Matt Baker, walked him through filing a records request in June, asking for a memo by the city attorney and "any and all other documents au-



By Clinton Lewis, Daily News via The Associated Press

Al Baker wanted to know about a rumored secret financial deal and filed an open records request.

thored by the city attorney, the mayor of Bowling Green, or any sitting city commissioner which relates to the city's determination" on whether to pay some controversial legal bills.

Within a few days, he got the memo, but City Clerk Katie Schaller said his request for other documents was too broadly worded.

Schaller also cited the open records exemption for draft documents that do not propose final action, and said that any communication between the city's law department and other staff or elected officials is subject to attorney-client privilege.

Draft documents and privileged legal documents are two exemptions to the act. Others frequently used include personal information, proprietary business information and active legal investigations.

If a request is denied, citizens can appeal to the state attorney general.

Within a few weeks, the attorney general will issue a written opinion on whether the records were illegally withheld. Either party can appeal the decision to circuit court.

Al Baker said he wasn't aware that he could appeal to the attorney general. So he took his case directly to circuit court.

Only jail inmates whose requests for documents have been rejected by the Corrections Cabinet are required to appeal to the attorney general first. All other denials can be appealed directly to circuit court.

Al Baker argued that, because some of the e-mails he wanted had already turned up in the

SEARCH THE WEB

These Web sites provide information on Kentucky open records and meetings, state laws, audits, the federal Freedom of Information Act, the Health Insurance Portability and Accountability Act, and homeland security laws:

- Kentucky Attorney General's Web site — ag.ky.gov/civil/open-rec.htm.
- University of Florida College of Journalism and Communication's Marion Brechner Citizen Access Project — www.citizenaccess.org.
- Kentucky Press Association's descriptions on attorney general's open records opinions — kypress.com.
- Kentucky.gov, lists of government data available online through state government — kentucky.gov/Portal/OnlineServices.aspx.
- University of Missouri's Freedom of Information Center — foi.missouri.edu.
- Tennessee Coalition for Open Government Audit 2004 — www.tcog.info.
- Indiana 2004 Audit by eight newspapers — www.indystar.com/articles/9/188949-6629-009.html.
- National Freedom of Information Coalition, an umbrella organization for some 40 open government and First Amendment organizations — www.nfoic.org.
- First Amendment Center — www.firstamendmentcenter.org.
- The Reporters Committee for Freedom of the Press — www.rcfp.org/cgi-local/tapping/index.cgi.
- AP Managing Editors Web site — www.apme.com/news/2004/121404sunshine.shtml.
- Society of Professional Journalists — spj.org/foia_opendoors.asp.

newspaper, the city's claim of privacy was void.

Warren County Circuit Judge Steve Wilson concluded that the city e-mails were indeed draft documents and therefore exempt, and that an unauthorized leak to a newspaper did not officially waive the city's privilege.

Nonetheless, Al Baker did not go away empty-handed. In the course of the suit, the city re-

leased 37 e-mails of city commissioners' discussions about the financial deal. After a three-month fight, Al Baker got to read the documents he'd wondered about.

But he's not finished, believing that the city may have a few more relevant documents. He appealed Wilson's ruling to the Kentucky Court of Appeals, which has yet to consider it.

Basics of Kentucky's Open Record Act

WHAT IS THE PROCEDURE FOR INSPECTING A PUBLIC RECORD?

To inspect a public record, you must make a written request to the official custodian of the records of the agency. The custodian is the agency employee who is responsible for maintaining the agency records. You should describe the records you want to inspect, sign the request, and print your name on it. You may hand deliver, mail or fax your request to the agency.

If you request copies of public records, the agency's copying charges must be limited to the actual cost of reproduction, including materials and mechanical reproduction, but not including the cost of personnel required to copy the record.

The public agency must respond to your request, in writing, within three days, not including Saturdays, Sundays and legal holidays. If the agency denies any part of your request, it must tell you which Open Records Act exemption it is relying on. The agency must also explain how the exemption applies to record.

If the record that you want to inspect is in use or temporarily unavailable, the agency should notify you and designate a place, time and date for inspection no more than three days from the date it received your request. If the delay is greater than three days, the agency must give you a detailed explanation of the cause.

You may inspect public records during the regular office hours of a public agency or by receiving copies of the records through the mail. If you live or work outside the county in which the records are located, and you precisely describe the records, the public agency must mail copies to you. The agency may require advance payment of the copying fee and postage. In providing you with copies, the agency is not required to convert records from paper to electronic format but is only required to give you what they have.

WHAT RECORDS ARE EXEMPT FROM PUBLIC INSPECTION?

The Open Records Act permits a public agency to withhold certain records unless you obtain a court order directing their release. These include:

- Records containing information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy.

- Records that are confidentially disclosed to an agency or required by the agency to be disclosed to it which are generally recognized as confidential or proprietary and which if disclosed would permit an unfair commercial advantage to competitors, including records which are compiled and maintained in conjunction with an application for or the administration of a loan or grant; the application for or the regulation of assessments, incentives, inducements, or tax credits; or the regulation of a commercial enterprise.

- Records that relate to the prospective location of a business or industry which has not previously disclosed that it is interested in locating, relocating, or expanding in Kentucky.

- Records developed by an agency in conjunction with the regulation or supervision of financial institutions which reveal the agency's internal examining or audit criteria.

- Real estate appraisals, engineering or feasibility estimates, and evaluations made by or for a public agency in the course of acquiring property, until all of the property has been acquired.

- Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment or academic examination before the exam is given or if it is to be given again.

- Records of law enforcement agencies or agencies involved in administrative adjudication if disclosure of the records would harm the agency by premature release. Such records may be inspected after enforcement action is completed or a decision is made to take no action, unless they were compiled and maintained by a county or commonwealth's attorney or unless another exception applies.

- Preliminary documents, including drafts, notes, correspondence with private individuals, recommendations, and memoranda in which opinions are expressed or policies formulated.

- Public records that are prohibited from disclosure by state or federal law.

WHAT CAN YOU DO IF YOUR REQUEST IS DENIED?

Your may file an appeal with the attorney general for review of the agency's actions. Your appeal must consist of a letter describing the circumstances of the denial, a copy of your written request, and a copy of the agency's written denial, if available. Unless you are an inmate confined in a jail or correctional facility who is aggrieved by a denial issued by the Corrections Cabinet, you may bypass the attorney general's office and file your appeal in circuit court. If you choose to go directly to circuit court, you will incur the costs of bringing a lawsuit, including filing fees and your attorney's fee.

The attorney general will review your appeal and issue a decision. The decision will state whether the agency violated the Open Records Act by denying your request. You will receive a copy of the decision along with the agency. You or the public agency may appeal the attorney general's decision to the circuit court of the county where the agency has its principal place of business or where the record is maintained. The attorney general should be notified of any circuit court action, but may not be named as a party in the action.

If an appeal is not filed within thirty days, the attorney general's decision has the force and effect of law and can be enforced in circuit court. However, the attorney general does not have authority to force an agency to release records or otherwise enforce the decision after it is issued.

If you prevail against an agency in circuit court, you may be awarded costs, including reasonable attorney fees, if the court finds that the records were willfully withheld. The court may also award you up to \$25 for each day that you were denied the right to inspect the records.

Source: Kentucky Attorney General's Office

WHAT CAN YOU GET?

Wealth of information should be available

By Bill Estep
Lexington Herald-Leader

LEXINGTON, Ky. — Want to know how much your neighbor's house is worth, or whether the mayor has put all three of his children on the public payroll?

Does that smooth talker dating your daughter really have a degree from the University of Kentucky? And what about the broker promising you a very attractive return for your \$5,000 — is he licensed?

You can find out.

In our society, there is a record of most everything people do from the cradle to the grave. And with the philosophy of openness in a democracy, much of it is public, especially when it involves activities of government officials and agencies.

So you can find out if inspectors saw any problems at the day-care center where you take your children, or if the plant where you work was cited for safety problems last year. What kind of pollutants come out of the factory down the road from your parents' house? Has the bar around the corner from your 19-year-old son's apartment been in trouble for serving to minors?

You can find out how much the county judge-executive spent wining and dining himself and others on the county's tab last year, and where; or if the state rents office space in your town from a crony of the governor, and whether it took bids to get the best price. You can find out if the candidate preaching the virtues of voting actually

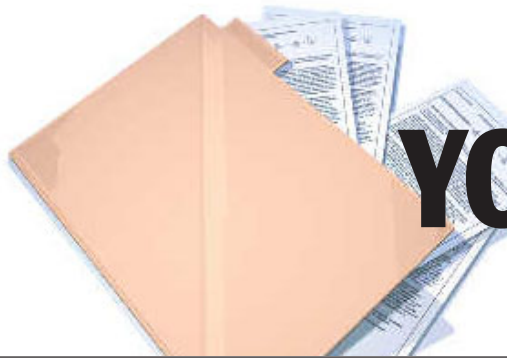
bothered to vote, or has liens filed against him because he hasn't paid his taxes.

You can find out who bankrolled the election campaign of your U.S. senators and representatives. You can find out how much water was wasted last year because of leaky lines in the water district that supplies your house, whether the airport board bought land from one of its members, and the qualifications of the person hired to run your school district.

Courts are not covered by the Open Records Act, but many records maintained by the courts are open, and contain a wealth of information in criminal and civil actions. Might be nice to know if that person you're considering going into business with went bankrupt three years ago.

QUICK TAKE

- Did inspectors see any problems at the day-care center where you take your children?
- Has a candidate who's preaching the virtues of voting actually bothered to vote?
- Did your daughter's latest boyfriend actually get a degree from the University of Kentucky?
- What kind of pollutants come out of the factory down the road from your parents' house?



YOURS FOR THE ASKING

Kentucky's open records audit

Records audit prompts praise, some criticism

By Joe Biesk
Associated Press Writer

FRANKFORT, Ky. — Saying that “information is what you base democracy on,” former Courier-Journal publisher Barry Bingham Jr. urged Kentuckians to care about open government even if they have little direct interaction with public records.

Bingham and others were reacting to a series published this week in newspapers about how officials are complying with the state's Open Records Act.

One state senator said he was disappointed that the counties he represents didn't fully comply with the law. Other legislators expressed support for the law, and the House approved a bill aimed at bolstering local officials' awareness.

The president of the Kentucky Jailers' Association defended the low compliance rate among jailers, however, saying some jailers may have been concerned about possibly exposing their counties to lawsuits.

The series was organized and conducted by the Kentucky Press Association, The Associated Press, and other newspaper, professional and university student groups.

A survey was conducted in nearly all of Kentucky's 120 counties in October. Auditors asked for four public documents: a city budget, a county judge-executive's expense report, a school superintendent's contract and a jail log.

City budgets were produced in 99 of 113 instances and denied only once. County judge-executives released their expense records 79 out of 109 times, refusing to do so nine times. Superintendents provided auditors their salary and compensation package information in 56 out of 110 cases,

and denied them 13 times. Jailers and police produced inmate logs only 28 out of 113 times, and refused 67 requests.

Legislative response

Rep. Derrick W. Graham, D-Frankfort, said the audit “makes people aware of some of the problems and the needs that we have in terms of trying to make sure that this law is carried out in the proper manner.”

While his bill that the House approved Thursday was filed before the series was published, he said the project was a service that could promote awareness.

Graham's plan, sent to the Senate, would help ensure officials are familiar with Kentucky's open records and open meetings laws, he said. Officials serving on boards or commissions would have to sign off on having received information about the laws.

State Sen. Julian Carroll, a Frankfort Democrat who was governor when an open records law was passed in 1976, said he planned to ask officials in the counties he represents why they didn't all fully comply.

“I find it very difficult to understand why out of 120 counties you have so many counties that failed to comply 100 percent,” Carroll said. “Any public information ... should be produced upon a request within the time frame or an extended time frame. There is no excuse for not producing it.”

Sen. Ernie Harris, R-Crestwood, said the survey was a good idea to help people understand the law.

Jailers respond

Bobby Waits, president of the Kentucky Jailers' Association, said some jailers may have been concerned about possibly exposing their



File photo

“Any public information ... should be produced upon a request within the time frame or an extended time frame. There is no excuse for not producing it.”

Sen. JULIAN CARROLL



The Sentinel-News

“Do I take a chance in giving you that information and risk it being wrong and face a lawsuit? My first and foremost responsibility is protecting my county.”

BOBBY WAITS, Shelby County jailer

counties to lawsuits. Some jail logs may contain confidential medical information, or could pose security problems if publicized, said Waits, who is also the Shelby County jailer.

In instances where there is doubt about a document, most jailers would turn to their respective county attorneys, Waits said. But there should be a more clear-cut definition of what documents are public, Waits said.

“Do I take a chance in giving you that information and risk it being wrong and face a lawsuit?” Waits said. “My first and foremost responsibility is protecting my county.”

Crittenden County jailer Rick Riley said he disagreed with how the audit was conducted. Riley — who refused to give auditors his jail logs — said he would have produced them if auditors had introduced themselves or indicated their mo-

tives.

State law, however, does not require citizens to show identification when requesting information. (When asked by a reporter for The Associated Press — who identified himself — Riley released the jail's log.)

“I'm not in a position to just hand things out to anybody who just walks in off the street,” Riley said. “I don't know what purpose it is that they would want that list, and I need to be afforded an opportunity to know that.”

Other comments

Vince Lang, executive director of the Kentucky County-Judge Executive Association, said his organization would try to get more information on the laws out to its members.

“It's kind of a good test to see where everybody is,” Lang said.

Bob Arnold, executive director of the Kentucky Association of Counties, said most county officials are aware of their obligations under the open records law. Still, some county officials worry about potential lawsuits that could result from improperly releasing a document.

But open government is one of the cornerstones of democracy and should be preserved, Bingham said.

Without facts, he said, citizens can't make informed decisions about which candidates or programs they should support.

Attorney General Greg Stumbo, whose office reviews open records appeals, said he was “very pleased with the coverage” in the series.

Counties that didn't have full compliance, he said, should “take a look at their procedures and see if they want to be more responsive.”

OPINION

The people's business, in plain view

By Charles N. Davis
University of Missouri

The Kentucky Open Records Project is a labor of love, the product of hours of work by dozens of journalists across the Bluegrass State, and the first comprehensive attempt to gauge the state of access.

All in all, the results paint an encouraging picture, especially when compared with the results in many other states.

Freedom of information is a constant battle, after all, and denial is far too often the norm rather than the exception to the rule, which should be transparency.

Some 30-plus audits nationwide yield a distressing theme:

Despite the best efforts of many public officials, many in our federal, state and local governments cling to the notion that government information belongs to the government.

In Kentucky, like in many other states, law enforcement remains a laggard when it comes to public records. Too many law enforcement agencies in the Kentucky audit seem to operate as if they own the information.

They don't.

The intent of the legislators in enacting the Open Records Act is contained in its preamble.

The legislature declared that “free and open examination of public records is in the public interest and the exceptions provided for by (the act) or otherwise provided by law shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others.”

In other words, the information is yours — not theirs — and the Open Records Act exists for you, not them.

Why do newspapers conduct freedom of information audits?

Because somewhere in Kentucky, far more often than we care to think about, a citizen is denied access to public records. For that citizen, the denial represents what might very well be the first and only time that parent, homeowner or student has requested information from their government.

And what happened? A stern clerk, who may or may not have known better, told them no. That is why we conduct open records audits.

This audit belongs to you, the citizens of Kentucky. The right of access to information in Kentucky exists thanks to you. Journalists care deeply about freedom of information, because without access to information, we can't give you the information you need to govern yourselves in a democratic system.

Freedom of information is a right whose loss is not felt until after the fact, a right which far too often is la-

beled a press right — of interest only to ink-stained wretches in the Fourth Estate.

It is a right to be exercised by an aggressive press on behalf of the people, to be sure, but it is also your tool in monitoring your government.

Kentucky's open records law empowers the citizen to a far greater extent than you may realize. Unlike many states, in Kentucky, rather than being forced into the courts when a public agency denies access to a record, any citizen may ask the state attorney general for an opinion on the matter.

That is a powerful check on government, but only if you use it.

The Kentucky Open Records Project demonstrates that many officials across the state still need to realize that the information in their files belongs to you, the citizens of Kentucky.

This audit is the first step; your active involvement is the next.



Charles N. Davis is executive director of the Freedom of Information Center at the University of Missouri School of Journalism.

Other sources of useful information for getting involved with your government

Here are some publications that provide useful information for citizens who are interested in learning about and participating in public affairs.

► **Beyond Voting: A Citizen's Guide To Participating In Local Government**, Kentucky Local Governance Project, 433 Chestnut St., Berea, KY 40403.

► **A Citizens' Guide To The Kentucky Constitution**, Research Report No. 137, Legislative Research Commission, Capitol Building, Frankfort, KY 40601.

► **County Government In Kentucky**, Information Bulletin No. 115, Legislative Research Commission, Capitol Building, Frankfort, KY 40601.

► **Duties Of Elected County Officials**, Information Bulletin No. 114, Legislative Research Commission, Capitol Building, Frankfort, KY 40601.

► **Handbook For Newly Elected Officials**, Kentucky League of Cities and Department of Local

Government, 101 E. Vine St. Lexington, KY 40507.

► **Kentucky Municipal Statutory Law**, Information Bulletin No. 145, Legislative Research Commission, Capitol Building, Frankfort, KY 40601.

► **Outline: Open Records And Open Meetings**, Office of the Attorney General, 700 Capitol Ave., Frankfort, KY 40601.



YOURS FOR THE ASKING

Kentucky's open records audit

PUTTING TEETH IN ACT

Appeals to attorney general are key

Procedure limits costly court fights

By Luke Saladin
The Kentucky Post

COVINGTON, Ky. — While there are — and probably always will be — disagreements about the interpretation and strength of Kentucky's Open Records Act, people who routinely deal with such issues say the system for enforcing the law is quite effective.

In Kentucky, rather than proceeding directly with a costly court battle when a public agency denies access to a record, organizations and individuals have the right to ask the Kentucky attorney general for an opinion.

While the attorney general may not always be the final authority in such matters, experts say the procedure is a welcome departure from other states that either force individuals to move directly to litigation or have a

committee — such as those in New York and Connecticut — that hears such disputes.

"I actually think Kentucky is a very strong state in terms of the way it handles open records," said Rebecca Daugherty, freedom of information director for The Reporters Committee for Freedom of the Press, a nonprofit group based in Arlington, Va., that provides free legal assistance to journalists.

"In most states you don't have an independent governmental body to hear these complaints. That's not to say we consider all the rulings to come out of Kentucky favorable, but we think the system, the way it is set up, is a good one," she said.

Those being denied a public record who feel they are in the right need only submit a letter to the attorney general asking for an opinion.

Jon Fleischaker, a First Amendment attorney who represents the Kentucky Press Association, The Courier-Journal and a number of other media

outlets, said putting the attorney general on the front lines of public records issues ensures that decisions are made in the best interest of the public.

"The attorney general system works well, frankly, because if the office does something the public doesn't like, they have to face those same people when election time rolls around," Fleischaker said. "It also provides a cheap and easy way that laypeople can get better access to the records they want."

Fleischaker, who helped draft the state's public records law in the 1970s, said it wasn't until the law was amended in 1992 that attorney general's opinions had any real weight.

Before that if the attorney general issued a decision stating that a document or piece of information should be available to the public, the agency withholding the information could simply ignore the ruling without punishment. The only recourse was then to file a lawsuit and fight for the records.

"Essentially, the agency that was being challenged could simply tell someone they were not going to listen to the decision," Fleischaker said. "It was absolutely a ruling without any teeth."

Fleischaker said the legislature amended the law so that, if the attorney general's opinion was not challenged in court within 30 days, a person or organization could simply take the decision to court and, without debate, the court could order the document to be turned over or impose punishments on the agency holding the documents.

If the attorney general's office denies a request, that decision can be challenged in court. According to the statute, a records case generally moves ahead of other items on the circuit court docket and "shall be assigned for hearing and trial at the earliest practicable date."

The attorney general's office issues about 500 decisions each year concerning the state's laws on open records and public

meetings.

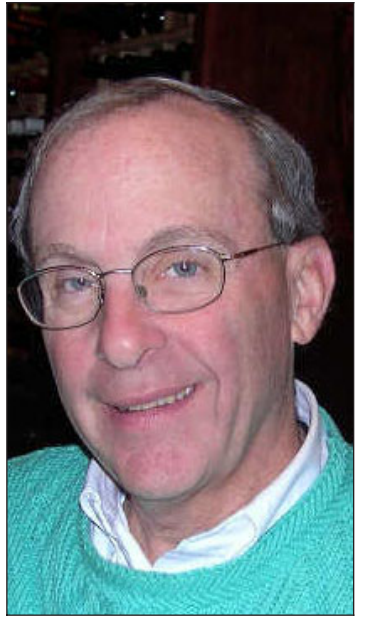
To inform ordinary citizens of their rights regarding public records, the office publishes a booklet titled "Protecting Your Right to Know." The office also publishes another booklet, "Your Duty Under the Law," which explains to public officials in the state what their responsibilities are regarding public records.

The office also participates in training programs across the state for law enforcement and other government agencies to keep them up to speed on laws regarding public records.

When requests for legislative branch documents are denied, appeals are handled by the Legislative Research Commission rather than the attorney general.

Fleischaker said the one notable drawback in Kentucky's open records law is that, if a person seeking a record is required to move his fight to court, it is difficult to recoup attorney fees unless he can prove that an agency knew it was breaking the law.

ACCOUNTABILITY



By Hank Ackerman, Associated Press

"You've got to insist on your rights," Jon Fleischaker said.

Access must be fought for or lost, attorney says

By Gregory A. Hall
The Courier-Journal

Kentuckians' best hope of having access to public records and the greatest danger to losing it are intertwined, attorney Jon Fleischaker says.

The hope lies in challenging attempts to deny access and the danger is not challenging efforts to deny it, said Fleischaker, who represents the Kentucky Press Association, The Courier-Journal and other media outlets.

"You've got to go after it every day or you lose it," Fleischaker said. "That's neither optimistic nor pessimistic. It just is the way it is."

Fighting for access in the short run will take care of preserving access in the long run, he said.

"You've got to push," he said. "You've got to insist on your rights."

Potential threats to access are claims by government officials that the release would endanger homeland security, invade personal privacy or stymie economic development, Fleischaker said.

"Each of those issues has some legitimacy, but they are constantly being used by public agencies and public officials who simply don't want the public to know what's going on — for reasons unrelated to homeland security or privacy or economic development," he said. "They just don't want the public looking over their shoulder."

As denials to public information are successfully challenged, Fleischaker said he believes more people see the benefit of public access and making the operation of government transparent to the people it serves.

"And I don't care if you're a Republican or a Democrat or an independent, it is important that government not dictate what we know and what we don't know," he said.

"The government works for us," Fleischaker said. "We don't work for the government, and there is only one way for us to hold the government accountable, and that is to know what they're doing and why they're doing it. It's accountability."

HEALTH PRIVACY



File photo

Sometimes law enforcement authorities will withhold more information about accident victims than the Health Insurance Portability and Accountability Act requires. Attorney General Greg Stumbo has ruled that HIPAA does not apply to police department records and that it does not supersede Kentucky's Open Records Act.

Medical act used – and misused – to shield data

By Jim Hannah
The Kentucky Enquirer

FORT MITCHELL, Ky. — Designed to give people privacy in an electronic age, the Health Insurance Portability and Accountability Act of 1996 has lessened the public's access to public records across the nation.

Police departments have cited the act, known as HIPAA, as a reason to withhold information. Nursing homes have given it as a reason not to inform residents about registered sex offenders living in their midst. And health departments have cited it in not releasing reports on diseases.

As interpreted in 2003 by the U.S. Department of Health and Human Services, which developed privacy rules that year, it has prevented the release of public records across the nation, said Lucy Dalglish, executive director of the Reporters Committee for the Freedom of the Press.

"Health care agencies are uncertain of what the law actually is, so they err on the side of complete closure," Dalglish said. HIPAA's goal was to protect the public

by giving people more control over their health information and how it is used.

According to the First Amendment Center, HIPAA applies only to businesses or agencies that bill or receive payment for health care services or transmit information for payment in electronic form. Businesses or agencies covered by HIPAA generally cannot disclose, without the patient's consent, personally identifying information such as names, addresses or specific medical condition.

Health care providers face civil or criminal penalties for violating the federal law. Criminal penalties include fines of \$100 to \$250,000 and 10 years in prison.

The Office of Civil Rights recently announced that "ignorance and confusion" about HIPAA are the basis of many of the more than 6,000 complaints it has received. To date, the federal government has not sought official sanctions for any cases it has investigated.

According to the First Amendment Center, in most cases a hospital cannot give journalists a patient's name. The hospital should be able to confirm, how-

ever, if a patient the journalist names is in the hospital and provide some additional details, such as general medical condition, an age range and a general address that includes the person's state or region.

The Health and Human Services agency has acknowledged on its Web site that health privacy rules should not impede newsgathering from sources not covered by the privacy rules.

Such sources might include police officers who are giving information about victims in emergencies, according to Jon Fleischaker, Kentucky Press Association general counsel and an attorney with the Louisville law firm Dinsmore & Shohl who represents The Courier-Journal.

In August, the Kentucky attorney general ruled in a case involving The Kentucky Enquirer that HIPAA does not supersede the state's Open Records Act.

In April 2004, The Kentucky Enquirer filed a written request with the Covington Police Department for a police report detailing a fatal garbage truck accident. The report was issued with the names, addresses and birth dates of the driver

and three "involved persons," including the person who was killed, removed.

When the paper appealed to the state attorney general's office, Covington responded that HIPAA prevented city police and fire personnel from releasing any information that would identify a person who had been treated by city emergency medical personnel.

On Aug. 24, Attorney General Greg Stumbo ruled that HIPAA did not apply to police department records.

Paul Alley, an attorney with Graydon, Head & Ritchey of Cincinnati, who represented The Kentucky Enquirer in its case against Covington police, said the problem that often arises is that public agencies jump to the conclusion that HIPAA applies.

"It's unfortunate that some government agencies occasionally withhold records based upon a flawed understanding of the scope and application of HIPAA," Alley said.

Bill Bartleman of The Paducah Sun contributed to this report.

NEW DEFENDER

Coalition forms to help protect and promote openness

By David Thompson
Kentucky Press Association

FRANKFORT, Ky. — A new coalition of citizen groups and media organizations plans to promote and ensure open government at all levels in Ken-

tucky through education and advocacy.

Kentucky Citizens for Open Government held its initial meeting in July in Frankfort. The group has since joined the National Freedom of Information Coalition and received a startup

grant from the coalition and The Knight Foundation. Kentucky is one of 40 states with a statewide group that will serve as a watchdog over government. The goals include:

► Openness in government at every level in the state.

► Unimpeded access by citizens to public records and government meetings.

► Citizens who understand and vigorously exercise their rights of access to government.

The group's headquarters is at the Kentucky Press Associ-

ation offices in Frankfort. The coalition is attempting to identify other groups, companies and individuals who have an interest in making sure government agencies abide by laws on access to meetings and records.

Individuals or organizations

interested in joining the Kentucky Citizens for Open Government may call the Kentucky Press Association at (502) 223-8821.

David Thompson is executive director of the Kentucky Press Association.

YOURS FOR THE ASKING

Kentucky's open records audit

MESSANGER-INQUIRER, Saturday, February 12, 2005 **7A**

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Include your name, address and a telephone number where you can be reached during the day. Letters should be no more than 250 words and will be edited for clarity.

Opinion

EDITORIAL

Access to records protects public interests

Access to public records is a topic that too many people may easily dismiss as being of interest only to journalists.

The truth is, there are no records in this state that are open only to journalists, but not others. Kentucky's Open Records Act states which documents are open

the Kentucky Press Association. The Associated Press, several newspapers, professional groups and students.

More than 100 students, volunteers and newspaper employees visited four public agencies in each county Oct. 21 asking to see certain public

or at least wanted to know a reason for the request. While asking for a reason may not seem all that heinous, it can be very intimidating to someone not accustomed to asking for a public document if it appears his or her success depends on a "good reason."

There are some exceptions, but mostly, doing business with a state or local government agency means one does not want to

business where the sun shines, rather than in darkness.

Access to those records offers an opportunity for the public to see how government is working — or not working. It can instill trust when the facts back up public statements and cause change when they expose half-truths.

We understand that most people may never seek out

of how local government spends tax dollars and who has been arrested or convicted of a crime. It also means reporting when real estate changes hands, the sanitary conditions of restaurants, who is getting married or divorced, who's building something on their property, etc.

The project on public record compliance. We expect elected office or public agencies to follow the law on public records and make sure all their employees understand it as well.

Your right to records

Kentuckians get tired of hearing that their state is stuck near the bottom of various lists. But when it comes to helping the public scrutinize government, Kentucky is not at the bottom.

Two groups — the Better Government Association and Investigative Reporters and Editors — just released a national "freedom of information" survey that ranked Kentucky seventh best among the states.

The problem is, not all public officials in Kentucky know what state law compels them to provide to you in the way of access. A few of those who do know seem downright unhappy about it.

An audit of compliance with state FOI law, just completed under auspices of the Kentucky Press Association, found that, when asked, most city officials, county judge/executives and school superintendents open their records to the public. But most jail personnel seem hostile about doing what FOI law says they must.

In fact, some jail personnel in Montgomery County, an FOI auditor who asked to see records was backed against the wall by Jailer Dwayne Meyer and two of his employees.

That's not as surprising as it may seem. Corrections

department training for jailers doesn't cover open records law as it obviously should. So where in the initial 32 hours of 40 hours of annual refresher work, there's room to ensure the public's right to know the public has strong

Kentucky has strong access laws, which are interpreted by the courts in favor of open, transparent government. Most public officials know what is required and they abide by that. It's a fair bet that the public officials who don't, are graft, corrupt, misfeasance or incompetence. In some cases, it's simply required.

The state House just passed a bill that would require public officials to complete FOI training. Rep. D. T. Edwards, a task force member, said that training is a requirement of the law.

After all, it likely was ignorance of the law that caused a number of public officials to improperly deny requests for records made by individuals in the first-ever statewide audit of compliance with the law. But ignorance of the law is never an excuse for noncompliance, particularly when you are an official elected or appointed to do the public's business.

The survey was organized by the Kentucky Press Association, The Associated Press, various newspaper and professional groups and several university student programs. Seven editorial employees of The Independent participated in the survey by requesting specific records from public officials in area cities and counties. In all, records were requested from officials in 114 of Kentucky's 120 counties.

The intent was not to embarrass public officials or to uncover widespread noncompliance with the Open Records Act. Instead, it was to "enlighten the public, the legislature and custodians of public records across that state" in hopes that "public access to government will be strengthened as a result," said John Nelson, immediate past president of the KPA and managing editor of the Advocate-Messenger in Danville.

The Open Records and Open Meetings laws are not just for the benefit of journalists, lawyers, activists and a handful of other people. They are for any individuals who desire to know what their public officials and public bodies are doing. For that reason, none of the individuals requesting public records in the survey identified themselves as journalists or gave any specific reason for their requests. That's because no reason should be necessary: A public record is just that — public.

The results of the survey were mixed. Cities free

THE INDEPENDENT | Ashland | Kentucky

IN OUR VIEW

A right to know

Open government is protected by strong laws in Kentucky

Maybe it was just happenstance, but it only seems appropriate that in the midst of a statewide second audit of compliance with the state's Open Records Act, the Kentucky House of Representatives overwhelmingly approved a bill aimed at better informing public officials of the requirements of both the Open Records and Open Meetings laws.

After all, it likely was ignorance of the law that caused a number of public officials to improperly deny requests for records made by individuals in the first-ever statewide audit of compliance with the law. But ignorance of the law is never an excuse for noncompliance, particularly when you are an official elected or appointed to do the public's business.

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The results of the survey were mixed. Cities free

school superintendents — while they may not have been too happy about it — supplied copies of their contracts; nearly three-fourths of jailers denied requests for copies of jail logs. Some wrongly insisted such records were not public.

By a lopsided 91-1 vote, the Kentucky House Thursday approved a bill aimed at eliminating ignorance of the law as an excuse for noncompliance. Under the measure, the state attorney general's office would provide information to officials explaining the "procedural and substantive provisions" of both the Open Records and Open Meetings laws.

The information would be sent to an array of officials, including county judge-executives, mayors, county and city attorneys, public school superintendents and the presidents of public colleges and universities. County judge-executives and mayors would distribute the information to locally elected officials and members of local governing boards or commissions. School superintendents would provide the information to members of school boards and school councils.

Rep. Derrick Graham, D-Frankfort, said his bill — which still must be approved by the Senate — would especially be informative for newly elected and appointed officials.

The bill — HB 77 — is a watered-down version of earlier failed bills that would have required newly elected officials to attend training specifically designed to teach them about the Open Records and Open Meetings laws.

No guarantee that what they are sent will be read, but the bill would require the secretary — who would handle the public's request — to show the laws say and show the law says. In fact, Kentucky law says that the secretary must show the laws say and show the law says.

In honor of the 30th anniversary of the law, newspapers across the state this week published packages of stories that explained how the law works and investigated how well officials

Open records

officeholders training to comply with law

ON THE INTERNET

For information on the Kentucky Open Records law go to: ag.ky.gov/opengov.htm.

Records laws are based on the idea: This is our government and we the citizens have the right to know what it is doing. At the 30th anniversary of the law, the Kentucky Press Association set out to see how well the keepers of our government — elected and appointed — at the county and local levels understand and obey the letter and spirit of the law.

Results of this audit, published in this week, are encouraging. Most public officials and school board officials requested records and produced the records. More than 70 percent of jailers provided requests for lists of the inmates in their jails. In some cases, the nature of the request was intimidating.

Montgomery County Jailers Debra and two employees refused to provide a wall calendar against a wall. The jailer didn't require a jailer number on the calendar. A jailer took down the calendar, looked up the owner's name, and asked questions. Other jailers, quizzically, worried about a prisoner could be

audit. But open-records laws are not just tools for the media; they are for all citizens. The public has the right to ask questions and get answers without facing obstruction or intimidation. It's the only way to

Open government

The issue:
Records law
Our view:
Strong tool

the state testing the law found fairly good compliance, although there were some problems, particularly with some jails reluctant to reveal information about inmates. On Thursday, the Kentucky House passed a bill aimed at making sure local officials are familiar with the law and its companion, the Open Meetings law. We support that bill, and want to remind citizens of the strong tool they have. After all, the public's business is the

als at the state and local levels understood and obeyed it. The Kentucky Post, which participated in the project organized by the Kentucky Press Association, concludes its coverage today. The good news is that for the most part, reporters and students who traveled

the number of records requested doesn't spell out a success. E-mails and other computer records. Some First Amendment groups hesitate to seek new amendments, for fear the law could be weakened instead. But electronic records should be included. Public officials can point to legitimate exceptions to protect personal health records, prevent identity theft or safeguard homeland security, but officials are prone to over-apply the exceptions. It's up to all of us to challenge denials and keep government open and accountable.

Compliance needed with open records

Government officials should be in full compliance with requests made under the Kentucky Open Records law, should be

Our view

only 28 gave auditors the jail log

intimidating toward auditors and should have procedures for open records in place.

The four-day audit, which Saturday, shows compliance with the law is spotty, even though been on the books for 13 years.

The project was under the auspice of the Kentucky Press Association. Governmental agencies were audited in 120 Kentucky counties.

While compliance generally good in region, there were problems. One audit at the Wayne County Regional Jailers and their staff general had the worst compliance record.

"They made it sound everything we were doing they weren't allowed to show us," said auditor

Open Records exists for the

The Kentucky Open Records Project is a labor of love, the product of hours of work by dozens of journalists across the state. The first comprehensive attempt to measure the state of access to public records. All in all, the results paint an encouraging picture, especially when compared with results in many other states. Freedom of information is a constant battle, after all, and denial is far too often the norm rather than the exception to the rule, which could be transparency. Some 30-plus audits nationwide yield a distressing

lic interest and the exceptions provided for by (the act) or otherwise provided

even though such examination may cause inconvenience or embarrassment to public officials or others."

In other words, the information is yours — not theirs — and the Open Records Act exists for you, not them.



CHARLES N. DAVIS

Editorial

Keep government open, accountable

More than 100 "auditors" fanned out across Kentucky on Oct. 21 to test how forthcoming public officials would be with public records. Other than jailers, most government and university officials complied with requests, some cheerfully.

A similar test last April found Ohio officials complied only about half the time. The Enquirer's four-part series on Kentucky's statewide survey concludes today and reaffirmed it's not just news people who help keep our open governments open.

The most urgent need in Kentucky may be to wise up jailers

about Kentucky's Open Records Act. Northern Kentucky jailers acquitted themselves well, but statewide handed over inmate lists as requested. "Auditors" ranged from veteran reporters to journalism students. It's no excuse that some were young, or declined to furnish ID, or declined to furnish explanation or ID. All require explanation and a written name, a signature and a written description of the records. Those are our records. We own them — not the government.

Indiana set the standard for open records audits in the late 1990s: Public officials overwhelmingly failed to honor requests. State reforms followed. Kentuckians are blessed with some special powers. The 1976 act requires a response within just three days. If denied public information, you can appeal to Kentucky's attorney general for a free opinion. And thanks to a 1992 amendment, if the AG's opinion isn't challenged in court within 30 days, the court can order copies of the documents to be handed over or impose punishment on the non-cooperating agency. The 1992 reform also cut

the number of records requested doesn't spell out a success. E-mails and other computer records. Some First Amendment groups hesitate to seek new amendments, for fear the law could be weakened instead. But electronic records should be included. Public officials can point to legitimate exceptions to protect personal health records, prevent identity theft or safeguard homeland security, but officials are prone to over-apply the exceptions. It's up to all of us to challenge denials and keep government open and accountable.

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