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OPEN RECORDS, GOVERNMENT

# Statesman journalists depend on open government

## Requests for records uncover truths

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AMERICAN-STATESMAN STAFF

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The pages of America's newspapers and the Austin American-Statesman are filled every day with articles documenting government at work. Many of those processes are mundane and obvious — the slow-grinding meetings during which public officials cast votes in full view, for example.

Not all the work is that transparent, however. Large numbers of stories that involve public officials and institutions are made possible by state and federal laws that seek to uphold a bulwark of American liberty: an open and accessible government.

The preamble to one of those legal safeguards, the Texas Public Information Act, states that the people "do not give their public servants the right to decide what is good for the people to know and what is not good for them to know."

That state law enabled Statesman journalists to write or add necessary context to hundreds of stories in 2007, according to an informal survey of reporters conducted for Sunshine Week, an annual national initiative that seeks to impress the importance of a transparent government and public access to government records. This year's Sunshine Week began Sunday.

Many reporters said the law is so central to their work that submitting requests for documents has become a necessary routine and a staple of their journalistic toolbox.

"I pretty much always have a request for information out there," said Statesman reporter Corrie MacLaggan, who covers state government.

Adopted in 1973, the Texas Public Information Act, formerly known as the Open Records Act, spells out which information and records public agencies are required to provide, what is exempt from disclosure and how long agencies may take to respond. According to the law, governmental bodies must "promptly produce" the information. If an agency needs longer than 10 business days, it must be certified in writing.

Despite the regulations, the responses from local, regional and state governments; public universities; and other institutions are uneven.

Many of the Statesman's requests in 2007 were answered promptly, and reporters praised some agencies for responding quickly to inquiries. Some, however, cited instances in which public officials routinely required them to go through the procedure of submitting official requests for records — such as documents or contracts approved by a government body — even when they were readily at hand or did not fall under protected status. (With few exceptions, contracts approved by a government body are available to the public.)

In many other cases, governmental bodies habitually took 10 days — or longer — to respond. Or they sought to withhold requested records or information while they got an opinion from the attorney general's office, which can take up to 55

business days.

Though the American Society of Newspaper Editors has spearheaded Sunshine Week since 2005, the initiative also involves students, teachers, private citizens, public officials, bloggers and librarians. Open government guardians cite anecdotal evidence that more residents are filing open records requests.

"People need to care because it's really not about journalists; it's about good government," said Debra Gersh Hernandez, a national coordinator for Sunshine Week who works for the American Society of Newspaper Editors.

Survey results released Sunday found a significant increase in the past three years in the portion of Americans who believe that the federal government is very or somewhat secretive, from 62 percent of those surveyed in 2006 to 74 percent in 2008. The survey of 1,012 adults was commissioned by the newspaper editors society for Sunshine Week.

### **Uncovering troubles at Youth Commission**

When allegations of sexual abuse and official misconduct erupted last year at the Texas Youth Commission, reporter Mike Ward filed the first of numerous open records requests, which yielded new details about what would become state government's biggest scandal in a decade.

Youth Commission officials provided some information but ignored other requests in a pattern that brought the intervention of Travis County Attorney David Escamilla, with whom Ward filed a complaint. In one instance, the state agency appealed to the attorney general's office to withhold a report by a task force that recommended changes at the Youth Commission.

Last summer, the agency unsuccessfully investigated Ward to try to find the source of leaked documents that were the basis of his stories when the commission did not provide the records he sought. A copy of the commission's investigation report was made public after another records request by the Statesman.

### **Encountering barriers to public information**

In 2007, some agencies asked the newspaper to submit records requests when reporters felt certain that the information they sought was not exempt from disclosure and could be easily retrieved.

When reporter Claire Osborn wanted to view an arrest warrant in a 2005 homicide case, the Horseshoe Bay Police Department asked her to submit an open records request even though the warrant was public record.

"Often, clerks in small towns do not understand open records laws, and you have to work with them to get what should be more accessible," Osborn said, a complaint echoed by other reporters.

"You see that a lot (even) within the same agency sometimes," said Hernandez, the Sunshine Week coordinator, adding that unfamiliarity with the law does not justify withholding information. "Some of it is (agencies are) being difficult; some is they're afraid. There are very few penalties for not releasing information, but in some cases, you can lose your jobs for releasing information you shouldn't have."

Statesman sports reporters agreed that when it comes to responsiveness on records requests, Texas A&M scores higher than the University of Texas, which "drags its feet as much as possible," sports editor John Bridges said.

In at least one instance, an area school district instructed candidates for a coaching job not to submit official applications so that the district would not have to reveal their names if the newspaper made a request for the information.

### **Urging public to see records as resource**

The state's Public Information Act applies to all governmental bodies in Texas except the judiciary. It states that any information collected or maintained by a governmental body is generally available to the public.

Texas requires that elected and appointed government officials be trained in open meetings and open records laws. However, officials may designate a public information coordinator to satisfy requirements, said Katherine Garner, executive director of the Freedom of Information Foundation of Texas.

Garner said the attorney general has held that agencies must respond promptly to records requests, meaning they may take a reasonable amount of time to produce the information.

"If it's something that's going to require some more research on, or if it's in archival boxes, then they have up to 10 business days to respond or send for an attorney general's opinion if they believe it may be subject to an exemption," Garner said.

Hernandez said that although Sunshine Week highlights the significance of open government laws and their value to news organizations, its message also targets nonjournalists because all people have access to government records. More residents are learning how to access them "to make changes in their schools or to find out what's going on environmentally in their areas," Hernandez said.

"People need to know what their elected officials are doing and hold them accountable, and open records laws are one of the best ways to ensure that this can happen."

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