

The state of secrecy: A Joint Effort

By Kyle Niederpruem

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A group of newspapers - The Journal Gazette of Fort Wayne, The Evansville Courier, the Star Press of Muncie, the Times of Northwest Indiana, The Indianapolis Star and The Indianapolis News, and the South Bend Tribune - combined for a county-by-county test of the effectiveness of Indiana's public access laws.

Government officials routinely violate state law by refusing to release public records, an unprecedented statewide audit found. Seven Indiana newspapers sent personnel to all 92 counties in August seeking death certificates, crime logs and reports, basketball coach salaries and local school board minutes - all public documents.

The results were startling.

Those who asked for records were lied to, harassed, peppered with questions, and told subpoenas and court orders were required. The worst offenders: county sheriff's departments.

Sixty-six Indiana sheriffs (71.7 percent) denied access to crime reports, and 50 (54.3 percent) denied access to crime logs. The most compliant: public school districts.

Seventy-nine Indiana school districts (85.9 percent) granted requests for school board minutes, the best overall rate for any record.

Gov. Frank O'Bannon said it might be time for a special task force to review state access laws.

"My first impulse is to disclose as much as possible," O'Bannon said. "Disclosure certainly reduces the degree of actions and events happening that are a danger to the public good."

Indiana has had some form of a "sunshine" law - allowing people access to records and meetings - since 1953.

Broad access measures swept the nation through the 1960s and 1970s as "reform" laws, encouraging more scrutiny of government and public participation.

There are plenty of examples of how disclosure of information can do public good, from solving crimes to questioning how public dollars are being spent.

But for the first time in Indiana, the 1997 audit confirmed what many people have suspected or experienced firsthand: Violations of the law are everyday occurrences.

Indiana has had mediocre access laws for decades, with no penalties or fines for violations, and limited avenues of appeal. Government officials believe their constituents are being denied government information out of simple ignorance - not malicious intent.

And the Indiana courts have only made it worse with a series of decisions since 1993 that have continued to erode public access. Indiana lawmakers have rarely proposed proactive measures to strengthen either the Indiana Open Door Law or the Public Records Act.

Awareness is key

Executives with the Indiana Sheriffs' Association, based in Indianapolis, were surprised at the audit results.

Each four-year election cycle, new sheriffs are offered training about public records. A thick how-to manual is provided, with specific sections about the law. A monthly newsletter, written by an attorney, provides updates about court rulings.

The association also provides a toll-free telephone number so sheriffs can call for quick advice.

"It's a little hard to believe," said John O. Catey, the

association's executive director and a former Wayne County sheriff.

"Some of 'em are protective of their records for whatever reason."

According to newspaper audit reports, here's how some sheriffs responded when asked for public records:

"How do I know you're not an ax murderer?" Rush County Sheriff Doug Gosser asked.

Eldon Fancher and Jon Oldham, sheriffs in Ohio and Decatur counties, said a subpoena was needed to see a crime log.

Other employees - from ranking officers to desk clerks - were just as uncooperative. Some public employees refused to release their names when asked for help.

"The only thing we can tell 'em is, 'Hey, fellas, this is public information,' " Catey said.

Association officials said they would send an advisory to each department that denied access to public records, reminding them that it is their duty to disclose.

A right to be informed

While national and state surveys continue to show Americans are worried about crime, county sheriff's departments don't make it

easy to get information about what's happening in Hoosier communities.

Anyone, by law, should be able to walk into a sheriff's office and receive copies of daily crime logs or incident reports. You don't have to say who you are.

You don't have to say what you want to do with the information. Jana Griffith, who spent seven years working with crime victims in Marion County, said chaos can occur when accurate information isn't released.

Refusing to release information can result in worse headaches for police. Rumors fuel fear. And fear results in excessive demands made on law enforcement by a panicked citizenry.

"If there's a rapist in my neighborhood, I have a right to know. I hate to think the public is put in jeopardy for lack of information," she said.

To fight crime, a nosy and well-informed neighbor often is the best remedy.

"Knowledge is power. Period," Griffith said. "That applies to both the people providing the information and the people getting it."

Costly denial

Scott Robinett, a Marion County deputy sheriff for 16 years, is now a private investigator.

Robinett, who has requested records in nearly one-fourth of Indiana's 92 counties, wasn't surprised at audit results revealing sheriffs to be the worst violators.

"Sheriffs are king of the county. Don't ever forget it. Who can lock up the sheriff? Only the coroner or the feds. They know that." Officials who denied access to the public also have routinely threatened and bullied Robinett, who investigates insurance fraud.

Robinett routinely asks police for complaints filed by people who claim they've been the victims of property crimes such as arson and burglary. The records can reveal a pattern.

Those fraudulent claims can add up. The National Insurance Crime Bureau estimates that property-based insurance fraud costs Americans \$20 billion annually. Without access to the records, Robinett and other investigators can't prove fraud.

Robinett has put one county sheriff's department on notice orally and in writing. He says he will sue the next time he's

denied records. But it's an extreme measure that he can ill afford as a small businessman.

Under Indiana law, however, that's the only option for Robinett or anyone else illegally denied a government record.

Suing the government

James Tygrett, a Hendricks County access activist, did sue. He won a favorable out-of-court settlement against the Avon Town Council in west-central Indiana. The council agreed to post its meeting notices legally, apologize to the community and pay several thousand dollars in legal fees.

But Tygrett also is more involved than most people. He's president of a homeowners association and ran unsuccessfully for the School Board. He attends even obscure government meetings that deal with drainage issues.

"All these things have a direct bearing on where I live," said Tygrett, a 47-year-old contract administrator for a major airline. He notes with frustration that the only remedy provided to him is a lawsuit. He was forced to sue the town he supports with taxes. The town then had to use his taxes to pay for being wrong.

"That's not right," he said.

Instead, Tygrett believes public officials should receive mandatory training on access laws. He also thinks there should be fines or penalties for those who deny citizens access to both public meetings and records.

The public doesn't understand what's at stake, either. Once a little bit of openness is lost, he said, it's easier to lose more and more.

Denial in disguise

Sometimes, denying access to records happens less directly. If a public agency charges excessive copying fees for public documents, it can make them unaffordable and unobtainable. Wendy Brant found that happening in Boone County; different agencies charged different rates. Because of those willy-nilly rates, she's running for county commissioner in the central Indiana community.

She also pressured the local government, demanding a consistent policy. In response, the Boone County Council passed a somewhat bizarre ordinance.

The result was a 10-cents-per-page copying cost, which is what Brant had hoped to accomplish. The ordinance also sets a maximum \$2,500 penalty for any county official who doesn't comply. But it goes beyond state law by prohibiting the dissemination of any copies made by a citizen. Until someone sues to challenge it, it will remain local law.

Brant favors penalties for all government officials, a measure that has failed repeatedly in the Indiana General Assembly. "It will make them accountable," she said. She doesn't believe elected officials who say accountability comes from being voted out of office for breaking the law.

"Fiddle," Brant said emphatically.

A law that never worked

Indiana's access laws have been mushy for decades: no penalties, plenty of loopholes and exemptions, and vague and inconsistent language.

Recent court opinions have set even muddier precedents. For 37 years, attorney Richard Cardwell was the lone lobbyist on state access laws, working on behalf of the Hoosier State Press Association.

"We've never gotten to where we should be," Cardwell said. "The records law might as well have been written in Magic Marker. It was an average law when it went into effect and it regressed."

The press association often is the only special interest group that lobbies to keep the limited access citizens enjoy.

And it, too, has other concerns. Newspaper publishers who are its members fret about tax laws, employer liability, advertising rates, recycled newsprint content - in addition to access laws. Access issues don't always rise to the top of that list.

"Sometimes, we get spread pretty thin. In an average session, about 10 percent of all the bills affect the industry. In a 1,200-bill session, that's 120 bills," Cardwell said.

With media groups struggling to keep up, a grass-roots movement across the country has resulted in the formation of 26 access coalitions.

Annual budgets range from \$300 to \$150,000, but most coalitions rely on volunteer energy to survive. Hoosier-born FOIndiana was founded in 1995. For two years running, it has sponsored a "Right-to-Know" conference at low cost, attracting hundreds of people.

Idaho and Rhode Island created groups to promote public education and lobby on access issues as recently as last year. But the political reality here also is that lawmakers tend to trust other public officials to do the right thing.

"You don't want to upset your county officials," said Rep. Mark Kruzan, D-Bloomington. Those are the people who provide volunteers and funds for election campaigns.

Those officials, too, often organize well-orchestrated campaigns to pummel pro-access bills.

"It's a political reality," Kruzan said.

Even Kruzan, as the influential majority leader of the House, has had trouble getting information from public agencies. He recently spent four months waiting for public records he requested from the state environmental agency.

"Would it help to have the public involved? Absolutely," he said.

Advocating openness

Attorney General Jeff Modisett has to defend state agencies and officials when they are sued for failing to disclose records or

denying citizens access to meetings.

By law, that's his job.

But nothing prevents Modisett from being the leading advocate for openness.

"When you look at these sort of statistics, I'm coming to the conclusion we need to do more," he said.

With nearly two-thirds of elected sheriffs denying access, Modisett said training needs to cut deeper within public agencies - perhaps down to the people who are working at public service counters.

Who should champion openness in Indiana?

"To some extent right now, there is a bit of a void because we don't have any one easily identified agency," Modisett said. "Right now, we don't have anybody."

Modisett's office sponsored several educational sessions for citizens and association groups throughout the state last year and plans to schedule more. About 5,000 booklets addressing the most frequently asked questions about access laws also were distributed

for free.

His office is now considering printing government record request forms on his agency's Web site.

"Quite frankly, that makes a lot of sense," he said, promising to do so.

An open meetings and records compliance board could provide the answer. Modisett said it could be done without creating a new level of bureaucracy or stretching state revenues.

But he deferred to another agency to do so: the Indiana Commission on Public Records.

Director F. Gerald Handfield Jr. said it can be done. The Oversight Committee on Public Records has existed since the 1930s, and has been meeting regularly since then.

Every record created, received or maintained by state government is reviewed by this committee to determine how long each of those records will be kept. The committee also determines when and if records will be destroyed.

A similar group exists in each Indiana county, so local boards

could address grievances if given that authority.

Handfield believes Indiana's access laws provide "lots of places you could drive trucks through."

And Modisett believes lawsuits are not a reasonable option for citizens who are denied access.

"It takes an incredible amount of time and resources and dedication to actually want to file a lawsuit," he said. "We ought to be in favor of openness. So we need to set up a system that, in and of itself, encourages it."

Kyle Niederpruem chairs the Freedom of Information Committee for the national Society of Professional Journalists. She also is a founder and board member of FOIndiana.

[Illustration]

Caption: STATE OF INDIANA WITH A KEYHOLE IN IT AND HINGES ON THE LEFT SIDE: Public access laws don't guarantee citizens' right to know and don't punish officials who operate in secret. The Freedom Forum Survey SOME OF THE RESULTS FROM THIS SURVEY FROM STATE OF THE FIRST AMENDMENT, A REPORT RELEASED IN DECEMBER BY THE FREEDOM FORUM. INCLUDES PIE CHARTS TO SHOW PERCENTAGE OF RESPONDENTS WHO AGREE IN RELATION TO THE TOPICS OF GOVERNMENT SECRETS, UNPOPULAR OPINIONS, RESTRICTING RIGHTS, AND FREEDOM OF SPEECH A CONCERNED CITIZEN: Wendy Brant testifies before a state House committee. Like other citizens, Brant is speaking out about access issues. She's also running for commissioner in Boone County, partly because of problems she's had in getting public records from her local government. HEAD SHOT: State Attorney General Jeffrey Modisett is an advocate of access to public records. HEAD SHOT: Rep. Mark Kruzan waited

four months to get some state environmental agency records.

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