

MICHIGAN NEEDS STRONGER FOIA LAW TO PROTECT PUBLIC ACCESS TO INFORMATION

By Mark Rochester, Detroit Free Press

Having spent my early reporting years in Michigan – honing the reporting skills at the Grand Rapids Press that would serve me well the rest of my journalism career – I was eager and excited to return to the state late last year and join the senior management team at the Detroit Free Press.

I've overseen investigative reporting efforts for more than 25 years as either a hands-on editor or senior manager, but the accountability reporting my teams have undertaken in southeast Michigan these last several months is among the finest I've been involved with and continues to renew my convictions about the ability of journalism to bring about positive change in our communities.

Some of the luster from that sense of pride and accomplishment is muted, however, when confronted almost weekly by efforts from state, county and local officials to hinder release of public information that should be easily available under Michigan's Freedom of Information law. I've worked as an investigative editor in six states, and in every time zone, and in none of those locations have I encountered the kind of obstructionist tactics I've observed since returning to Michigan. FOIA in Michigan is more restrictive, has more exclusions for state officials and is more laden with unnecessary costs than anywhere I've practiced journalism.

Many of the public information officers and other officials entrusted with the responsibility of fulfilling open records requests in Michigan would argue that they are executing the statute requirements to the exact letter of the law. And that may in fact be the problem.

FOIA statutes are intended to provide public access to documents and other government records at the lowest possible cost to the public. It's not a special privilege for the media. Indeed, the average citizen should have the ability to get information about how government officials and agencies at all levels operate.

No two states have the same open records statutes and probably none are free from criticism. But under Michigan statutes, agencies are aggressively denying requests invoking vague exemptions such as blanket "investigative materials" citations. They also delay responses with exaggerated predictions of enormous research efforts that are needed to provide estimates to fulfill a request. They charge outrageous fees for providing even simple documents – alleged processing costs that are making FOIA requests cost-prohibitive for news organizations and citizens alike.

Michigan's statute was amended just recently, but further improvements are needed to address these concerns and make it much more difficult to refuse access to documents and records.

Having worked in several states, particularly during my years with the Associated Press, I had an opportunity to utilize open records to conduct important watchdog reporting in California, Nevada and Hawaii. The open records laws in those states revolved around the idea that government records were presumed to be open and available to the public except in rare circumstances. In Michigan, the governor's office and state legislature have exempted themselves from scrutiny. Police agencies have broad discretion in declaring records "investigative" in nature and therefore unavailable for review. Even the names of police officers and other public employees have been denied by some agencies.

In Hawaii, for example, I remember pursuing court records pertaining to a scandal in the governor's office related to a cabinet official who was involved in alleged extortion and under-aged sex trafficking. I filed an open records request to the court administrator's office handling the case and argued that documents from the FBI and police agencies that investigated the allegations were no longer part of an active police investigation – the man attempting the extortion had been prosecuted, sentenced and deported – and therefore the details of how a high-ranking state employee was involved in the case were very much in the public interest. We obtained the records within a matter of weeks.

That wouldn't happen in Michigan, where gubernatorial and legislative business are exempt from open records requirements.

Public access, already less than ideal here, also is in danger of becoming even weaker.

State lawmakers across the country introduced dozens of bills in 2017 that would close or limit public access to a wide range of government records, information and meetings, according to a nationwide review by the AP. Most of those proposals did not become law, but advocates for open government are concerned about efforts to increase government secrecy and are bracing for more fights this year.

Michigan, along with Tennessee, had the third-highest number of bills proposed among the 34 states reviewed, according to a Free Press analysis of data collected for the study.

Just this month, state lawmakers in our state sent to the governor a proposed law that would make cybersecurity plans and vulnerabilities exempt from open-records requests. Topics under this exemption include cybersecurity assessments, plans and breaches disclosed to authorities by private companies, according to AP, which noted that even a company's data breach reporting could be exempt under the bill.

It's not just my opinion that Michigan FOIA laws are weak.

In a 2015 study by the Center for Public Integrity that examined state government accountability and transparency, Michigan ranked last overall among all 50 states, including 42nd in public access to information.

Michigan residents shouldn't tolerate government officials at any level who aid or abet efforts to keep public information out of the hands of citizens. It's time for all of us to roll up our sleeves and work toward making obstructionists accountable.

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