Localize It: State policies often put the burden of enforcing sunshine laws on private citizens

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Systems for resolving public records disputes vary widely from state to state, they can be difficult to navigate, and they often put the burden of enforcing open government laws on private citizens, a review by The Associated Press and CNHI News has found.

The review examined policies in all 50 states for a report timed to Sunshine Week, an annual observance of the importance of public access to government information.

It found that fewer than a third of states have offices that can resolve residents’ complaints over alleged open government violations by forcing agencies to turn over documents or comply with open meetings requirements.

In most states, residents have just one meaningful option when they believe an agency is illegally withholding information, and that is to wage a costly legal battle.

Read more below to see how the process works in your state, and to find suggestions and resources for reporting around open government policies.

**READ AP’S COVERAGE**

- [Nationwide review finds patchwork, ‘broken’ systems for resolving open records disputes](#)
- [States have hodgepodge of cumbersome rules for enforcing Sunshine Laws](#)

**SEE YOUR STATE’S PROCEDURES**

The AP and CNHI’s review revealed a jumble of state policies for resolving open government disputes.
Some states, like Arizona and Indiana, have offices that can review residents' complaints but can't force agencies to obey their findings. Others give their attorneys general authority to issue opinions or take matters to court, though experts say they rarely pursue litigation.

Beyond being difficult to navigate, these systems can carry hefty fees for those seeking information — or require them to file a lawsuit. This dynamic has a chilling effect, discouraging private citizens from gaining insights into the basic functions of government, including how their elected officials make decisions and spend taxpayer dollars.

See how the process works in your state here: States have hodgepodge of cumbersome rules for enforcing Sunshine Laws

**KNOW THE LAW**

Public access to government information is an important means for the people to hold their elected representatives accountable.

In the U.S., laws requiring governments to hold public meetings and to make records available exist both for the federal government and states. These requirements are known as the Freedom of Information Act or, in some places, as the Sunshine Law — so named for shedding light on government deliberations and operations.

- The federal government maintains a [FOIA website](https://www.archives.gov/foia/) with basic information about the law laying out open-records requirements for the U.S. government, in place since 1967. It includes a section about [how to submit an information act request](https://www.archives.gov/foia/submitting-requests-and-searching) to a variety of federal agencies.

- The federal Freedom of Information Act applies only to records of federal agencies. Information about state or local governments are subject to the specific sunshine laws of each state.

- Several organizations track open-records and open-meetings laws of each state.
● The Reporters Committee for Freedom of the Press maintains an online Open Government Guide that contains information about such laws.

● The National Freedom of Information Coalition also posts information about state sunshine laws. Among other things, the coalition contains sample letters for submitting records requests in each state.

State laws set forth differing deadlines for government officials to respond to public records requests. But that first deadline is not typically the final one. Laws often allow governments to respond by saying they need additional time to comply with the request. In some cases, governments may require a payment to cover their costs before fulfilling a request.

Many states have passed numerous exceptions to their open-records laws that allow certain information to be kept secret. When a record contains both open and closed information, government officials may redact the confidential information from the record.

The Freedom of Information Act doesn’t apply to federally recognized Native American tribes, and many tribal governments don’t have their own open-records law. Learn more from the Indigenous Journalists Association.

CONSIDER THESE REPORTING TIPS

● Submit an open-records request to a government entity for specific information. The more precise you can be in what you’re seeking, the more likely you are to get a result. If you know the title of a document or a narrow range of dates when a particular email was sent or received, mention those details in your request. Broadly written requests — such as for all emails containing the word “budget” — can also be made but may turn up so many records that it’s prohibitively costly and time-consuming to carry out.

● Examine the open-record exemptions in your state and how that affects access to information from public schools and colleges, cities, counties, courts and state agencies. Some state laws exempt entire categories of government officials, such as the governor or state lawmakers. Other state laws exempt particular types of information, such as personnel files or records about security plans. Have lawmakers been adding to these
exemptions in recent years? What can the public no longer know? Do people believe this right to privacy outweighs the right to the information?

- Examine the open-meeting laws in your state. Most regular business of courts, commissions, boards and lawmaking bodies must be conducted in the public. But state laws may contain exemptions for “executive sessions” to discuss certain topics in private, such as legal advice from attorneys. How often are your local school boards, city councils or county governing boards making use of these exemptions? Are they clearly outlining the reasons justifying the closed sessions?

- Examine whether it’s become easier or harder for the public to watch their government officials at work. Before the coronavirus pandemic, it was standard for government meetings to be conducted in person. Because of pandemic concerns about group gatherings, many governments began allowing members to participate in meetings remotely, and began livestreaming the proceedings for the public. Have those remote-voting provisions ended or been made permanent? Have governments continued to broadcast or livestream their meetings? What are pros and cons of this?

- Examine what political candidates and elected officials are saying about government transparency. Some candidates may espouse the need for a more open government when running for office. If elected, have they backed up their words with actions or policies? By contrast, are officials calling for less government transparency in order to promote public safety or individual privacy?

- Take a look at how tribal governments in your area handle requests for documents, electronic communication or video footage. Do they have policies on posting notice for public meetings or legislative sessions? Have tribes made moves to become more open about the government’s business?

- Know what avenues are available to you if a government entity denies you access to public meetings or records. Depending on the state, you may be able to go to an independent office, like an ombudsman, for help resolving the dispute. Otherwise, private litigation may be your only option for compelling an agency to comply with the law.
EXPLORE THESE RESOURCES

An initial “Sunshine Sunday” was organized by Florida newspapers in 2002 and adopted as a full week in 2005 by the American Society of News Editors. It’s now promoted by the Brechner Freedom of Information Project at the University of Florida, the Society of Professional Journalists and other groups.

*Localize It is an occasional feature produced by The Associated Press for its customers’ use. Questions can be directed to Katie Oyan at koyan@ap.org.*