

## CONCLUSIONS

**A**re Rhode Island's local governments open or shut in terms of releasing public information? The results of this study reveal that openness is not always a black and white issue. Instances of compliance with the Open Records Law and the Open Meetings Law were found alongside violations of these laws even within a department in a city or town. Overall, we cannot conclude that Rhode Island municipalities demonstrate openness as determined by these two laws.

We found that police departments, tax assessors, and town clerks were often reluctant to provide citizens with information to which they are entitled. Some cities and towns complied with the Open Records Law and Open Meetings Law and, thus, honored the public's right to know, while others seemed to either willfully or inadvertently disregard requests for information. Public officials who were in compliance with these laws are holding themselves accountable for their actions and decisions by allowing citizens to review the records and documents related to the work that they do.

Credit is due to those police and school departments which improved their level of openness since the release of *Access to Public Records* in 1998. In less than a year, some of these departments have changed their policies to be in compliance with the laws of open government. This year, virtually all police departments allowed access to the police log. All of the school districts granted access to teacher contracts and school committee minutes and, thus, improved from last year. Police departments improved their compliance with the legally limited photocopying fee, and school departments never overcharged. In some cities and towns, we not only received the information we requested, but it was provided in a timely and courteous manner. Steps have been taken in the direction of compliance on these points, but the overall results of the study indicate that openness has not been universally achieved.

While some cities and towns have improved in terms of openness, others have not. *Access to Public Records* showed the need for improvement in compliance with the Open Records Law, which has been in existence for about two decades. Given the publicity generated by last year's study, it was disturbing to find compliance rates of 37% and 32% for police records and municipal legal claims, respectively. The 85% compliance rate for education document requests indicates that some of Rhode Island's

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school districts also have room for improvement.

School departments were the best of the three areas of government studied. With few exceptions, we were provided with the information we requested of the schools. School committees did not achieve this level of compliance with the Open Meetings Law. Many districts did not correctly cite the law or the reason for entering into executive session, and virtually none of the districts that vote or reach a consensus in executive session clearly disclose their decisions afterwards. If citizens cannot find this information from the minutes--because it was not recorded, was too vague according to the attorney general, or was not clearly disclosed--we cannot be completely satisfied with how the committees are interpreting and complying with the law. The procedures of those committees which demonstrated a spirit of openness can be used as the standard for others in the areas in which the requirements of the law are ambiguous.

More disturbing than these misinterpretations of the Open Meetings Law were the clear violations of the Open Records Law, particularly evident in the results of our requests for court settlements and initial arrest reports. These records are explicitly deemed public under the Open Records Law and there should be no reason for a citizen to be denied access to them. Not all the municipal bodies which failed to comply with the law did so by actively refusing to provide the information. A substantial number of the denials were the result of a request being met by silence or inaction. Letter requests, most notably, were often left unanswered.

Public records, by their very nature and legal definition, are open to any person regardless of his or her ability to give a “good” reason for the request. A citizen does not have to be a relative of the victim or suspect to see an arrest report; or a party in a civil lawsuit to see the financial settlements of the case; or a parent of a child in a school district to access policy information. In many cases, we were granted access to the information as citizens simply interested in the issues, but in some instances, we were denied information for improper reasons. It is illegal for public information to be withheld because of the identity of the person making the request or his or her affiliation with the subject of the record.

The extent of the barriers to access that we encountered leads to an important conclusion: the Open Records Law and the Open Meetings Law are not adequately enforced in Rhode Island’s cities and towns. The problem is that one of the enforcement mechanisms,

citizens' complaints about individual violations to the Attorney General, can be inconsistent and erratic. In the instances in which citizens are educated about the laws and take the time-consuming steps to report violations to the Attorney General, these laws can be enforced. Unfortunately, not all citizens are aware of their right to know or take the initiative to report barriers to access that they encounter. In terms of the Open Meetings Law and school committees, violations occur every month, but almost none are reported.

### **Analysis: Why was Compliance Poor?**

#### *Ignorance of the law*

Over the course of this study it became apparent that many municipal officials were not familiar with the law and its 1998 amendments. Despite the publicity generated by last year's study, some police departments still refused to provide initial arrest reports. Others continued to charge over the legal limit for photocopying fees.

City and town clerks performed well in last year's study, but fared poorly this year in terms of disclosing financial settlements. In two instances, solicitors explicitly denied access to legal settlements. It is disturbing that, as practitioners of the law, solicitors did not follow the law.

After evaluating school committee minutes, we found that historical precedent often supercedes the law. School committees which have fallen into a routine with their procedures have not updated them to be in compliance with the law. Many school committee members do not appear to have a comprehensive understanding of the law. There was a relatively large discrepancy in the way in which school committees interpreted the Open Meetings Law and what the Attorney General's office has determined is necessary for compliance. For example, we found problems with the specificity of reasons for executive session and the committees' use of informal consensus in closed session. Therefore, most committees are not adequately making public the nature of the discussions in closed session and the decisions made there.

#### *Job Duties*

Some municipal employees who field public requests do not necessarily see it as part of their job to provide public information. Police officers see themselves as

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enforcers of the law, not as records personnel. Even officers who specialize in distributing records may view that task as a distraction to their policing functions. In some cases, records officers and clerks did not even have the authority to release documents without the chief's permission.

The bureaucratization of the records requisition process impeded access. In many instances, requests for legal settlements were forwarded or redirected to different locations. It appears that local officials were either uncertain of their obligations under the law and did not want to release information without authorization, or were simply unaware of the location of important documents.

### *Protective Secrecy*

To some degree, the culture of secrecy encountered during last year's study still exists today. Police departments generally value confidentiality over openness. They wish to protect the people involved in the arrest and often see no valid reason to give reports to the public.

The private legal system values confidentiality and secrecy; public officials often transport those values to the public sector. Two requests for legal settlements were denied when it was determined that the requester was not directly involved in the case.

School committees often use vague reasons to enter into executive session, perhaps with the intention of protecting the confidentiality of the employees and students being discussed. Some committees simply do not want the public to be aware of the events that occur in executive session.

### *Complexity of Requests*

The decrease in compliance rates as a whole, when compared to last year's study, can be partially attributed to researchers asking for more comprehensive and complex items. For example, although we received a greater number of actual police documents this year, the documents received were considered to be in full compliance only if they met the criteria of an initial arrest report. In terms of city and town government compliance, municipal clerks certainly receive more requests for the municipal budget than they do for specific settlement information. This is also true with school departments, as requests for professional development and teacher evaluation forms are not as routine as those for a teacher contract.

## Recommendations

The *Access to Public Records* study concluded with the hope that cities and towns would take the initiative to improve their areas of weakness in openness, having been made aware of their procedures that were illegal. Because the overall results this year were not indicative of openness or of complete improvements in compliance, we have included recommendations for public bodies which, if implemented, should remove some of the barriers to information. These steps would lead to a greater degree of openness, clarify some of the problems related to interpretation of the laws, and make Rhode Island government more accessible and accountable to its citizens.

### *Professional Duties*

Municipal officials who handle public documents should know what information is public and where the records are located.

Police departments have the difficult task of balancing open records with sensitive and personal information that is not to be released. Police departments must review policies on what information is public and what information is private and should be blacked out. Police narratives are public information and must be included in the initial arrest report for it to be complete. Additionally, police departments could greatly benefit by posting a copy of the Open Records Law in the station near the records request window. This would serve not only as a friendly indication of openness for citizens, but also as a reminder for officers that they must comply with the law.

Solicitors representing cities and towns should not settle cases confidentially. When a public body is a party, under the law, confidentiality agreements have no place in the final settlement. Tax assessors need to be aware that they are responsible for maintaining any record of reassessment of property. They are undeniably the custodians of tax records. City and town clerks should know where information relating to financial settlements is located, even if it is not in their office. Also, requests for such information made in writing are just as valid as other requests and should not be disregarded.

Lawyers hired by school committees as legal counsel should review the Open Meetings Law. As practitioners of the law, it is their obligation to advise committee members and the minute takers when their

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procedures inhibit openness. There are certain practices that school committees could adopt that would increase access to information. Statements of the reason for executive session can, and must, be more specific than "personnel" or "collective bargaining." Committees can follow the example of those districts that are currently open with this information. Minutes from executive session should only be sealed when the information they contain must remain confidential. Committees should not seal minutes in their entirety if certain portions of the minutes could be left unsealed. When committees reconvene after executive session, they should have a section of their meeting, and the minutes, entitled "Executive Session Votes." Under this heading, the votes and decisions from the closed session will be clearly evident to the public.

### *Information Management*

**D**uring many stages of the study, the problem of information management made obtaining the information difficult.

Information management problems hindered accessibility to records. Police officers were not always aware of how to operate their computer records system. Older, outdated systems were unable to sort records by type of incident. Tax assessors and clerks often could not find the requested records because of haphazard information management or filing systems. School department personnel did not examine policy manuals and contracts for requested information.

Police departments should give authority to release public documents to those officers that are charged with that duty. In many instances, records clerks needed the authorization of their chief to fulfill the request. The process of requesting information was greatly simplified when the police department used a standardized request form. The Scituate police form, for example, was easy to use and included the option of requesting information anonymously. Although written requests are not required by law, the specific forms make the process of requesting information more efficient for both the police department and the citizen making the request.

Municipal officials who handle records reflecting court settlements need to establish custody of the documents. When a solicitor's contract with a city or town expires, the solicitor maintains custody of records generated by his or her work, as private lawyers do. The solicitor still obligated to respond to queries regarding these records as if currently employed by the town.

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Retrieval fees that are incurred should be directed to the town and not to the requester of the records. Also, municipal officials should directly forward requests if they are not the custodian of the requested record. It is helpful to the citizens if they are notified when their requests are redirected and are told to whom they were sent. In order to proactively release municipal settlements, cities and towns should include in their annual report, or as an addendum to the city or town budget, a list of the financial terms of the settlements involving the town in that year.

During the study we found that some school officials need to update their district's policy manual and to know what information can be found within it.

While initially researching court cases, we found that the Superior Court data system often contained misleading information. An updating of this system would aid citizens. Similarly, some police stations are using outdated computer systems that make the retrieval of information difficult.

### *Institutional Changes*

**A** consistent enforcement mechanism is needed in order to monitor compliance with the laws of open government.

It is inconsistent that police officers and other municipal officials can claim ignorance to the Open Records Law to avoid penalties for non-compliance while the average citizen cannot claim ignorance when he or she is in violation of most laws. The Open Records Law states that, "The court shall impose a civil fine not exceeding one thousand dollars (\$1,000) against a public body or official found to have committed a knowing and willful violation of this chapter" (R.I.G.L. 38-2-9 (d)). We suggest that the law be amended so that the court may impose warnings and fines for any violation of this law.

Our study was aimed at measuring compliance with the Open Meetings and Open Records Law across the state, regardless of whether the incidences of non-compliance were intentional or inadvertent. It is essential for a mechanism to be implemented that will continuously monitor openness. Because the current method of enforcement is reactive, rather than proactive, many violations may go undetected; if a complaint is not filed, no action will be taken to rectify the situation. If violations go unnoticed for a long period of time, the procedures that are in violation may become part of the policy of the non-compliant public body. To remedy this problem, studies should be conducted regularly to monitor compliance,

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possibly with the help of non-profit organizations or the Secretary of State.

Currently, Rhode Island law allows aggrieved citizens to file complaints with the Attorney General. The Attorney General may then file suit on behalf of the complainant, issue an advisory opinion, or choose to take no action. The difficulty with this method of redress is that there may be little incentive for the Attorney General to take action consistently. Since the Attorney General depends on other government agencies and officials, especially police departments, the Attorney General may be reluctant to disrupt the relationships with those agencies to enforce the Freedom of Information laws.

Only thirteen other states place the power of enforcing the Open Records Law with the Attorney General. Some states, such as Connecticut, have created a Freedom of Information Commission to investigate public record complaints. The Commission serves the same purpose as the Attorney General's office in Rhode Island in regards to access to public records, but can devote more time to open government issues and is free of political and professional ties with the local public bodies involved with complaints. Because Rhode Island is a smaller state and may not warrant a full commission for open government issues, another possibility would be to transfer the Attorney General's responsibility to either the Secretary of State's office or to the already established Ethics Commission. By transferring the enforcement power, the Attorney General's position will not be compromised and the Freedom of Information laws can be fully enforced without conflicts of interest.

The Connecticut Freedom of Information Commission is also involved in educating members of public agencies in the law. They hold a statewide Freedom of Information conference each year, and are invited by cities and towns to give workshops on the Open Meetings and Open Records Laws. In addition to training members of public agencies, the Freedom of Information Commission also answers questions pertaining to the law and assists citizens with any procedural questions concerning a complaint. After interviewing school committee chairpersons in our study, we found they had many questions on the legality of their procedures but had no place to turn for advice. Rhode Island could create a commission or an "FOI Helpline," as the one in use in New York, that provides advisory opinions which would be of immense help to school committee members and other municipal leaders in Rhode Island.