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LET'S REOPEN OUR OPEN RECORDS LAWS

BY MPI PRESIDENT

Carl Graham

The State's open records laws are toothless and out of date. They were written when fax machines were cutting edge technology, and they leave citizens to fend for themselves against a sometimes uncooperative or even hostile bureaucracy. We need to give these laws a makeover with teeth and technology so that Montanans can see what's being done in their names and how their hard-earned dollars are being spent.

Article II Section 9 of our State Constitution guarantees that "No person shall be deprived of the right to examine documents..." And that right is enshrined in Montana laws that allow virtually anyone to request copies of public information. But do these laws work? Do they really provide access to public data for common citizens? The answer might surprise you.

In 2003 state news organizations tested the system with the Montana Freedom of Information Project. The results showed that while many government bodies followed state guidelines, there were abuses. Almost half the state's county sheriffs, for example, violated state law by not releasing public information. Similarly, in 2008 the Montana Policy Institute asked for public data from the state's school districts. Fewer than half bothered to reply at all; and of those, barely ten percent provided the requested information. You can see the results as well as district by district spending and revenue information at www.schoolsopenmt.org. These two examples, and many more, show why Montana scored a dismal 9% on a Better Government Association survey of all 50 states' open records laws.

The problem is that, while most public employees are conscientious about meeting their legal responsibilities, there are no incentives for those who do comply with state law and few penalties for those who don't. The only options after being ignored or denied – whether you're a large organization or a private citizen – are to give up or to hire a lawyer and sue. There's plenty of room for improvement between those two extremes.

Still, based on our experience you will probably get a response to your open records request more often than not (though not often enough). And you may be asked to pay, for example, anywhere from nothing to \$45 for a few months worth of credit card records as MPI recently did, demonstrating the wide latitude available to agencies under current laws. But you're also likely to run into something even more frustrating. You'll probably either be snail-mailed or be told to show up in person to make paper copies of whatever you're seeking. So much for the Information Age.

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For MPI's www.schoolsopenmt.org effort mentioned earlier, we provided school districts the option of uploading their data to our website. No printing, no copying, no stamps. And for us: no scanning, no typing, and easy assessment. Fewer than five of more than 400 districts took us up on the offer. Sadly, those that didn't were perfectly within current law in charging us to print, copy, and mail the data, even though they could have provided it as simply as sending an email. That's a waste of taxpayer money and a barrier to transparency.

So how do we ensure that citizens can get their records in a cost effective manner and in 21st century format? First, we need another option between giving up and going to court. Earlier this year Pennsylvania became the latest state to establish an office that hears appeals and makes decisions regarding alleged violations of the state's right to know laws. They've already received more than 370 cases, most of them from everyday residents. Or if that's too difficult, even an ombudsman empowered to review appeals and standardize costs for records requests would help.

And for cases that do go to court, Anaconda Rep. Dan Villa (D-HD86) had a 2009 draft bill that would have allowed civil penalties for intentional violations of our right to know. It didn't get anywhere, but it's a step in the right direction that is worth considering again during the next session.

And finally, we need to bring our laws into the Information Age by requiring that records be made available electronically as well as on paper. If it's created and stored on a government computer, it should be made available in the cheapest and most usable format available. This will decrease costs and, more significantly, increase peoples' ability to sort through and analyze the reams of data that governments produce every day. Only by making data easily available and putting it in a usable electronic format will we truly be able to see what's being done in our names and how our hard-earned tax dollars are being spent.

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To schedule an interview with MPI President Carl Graham, please call 406.219.0508 or email info@montanapolicy.org.

The Montana Policy is an independent nonpartisan policy research center based in Bozeman. It provides analysis and information to encourage individual freedom, personal responsibility, and free markets in Montana.

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