

Despite law, officials still deny access to public documents

This is the first in a four-part series on the public's right to see public records in Tennessee.

By LEON ALLIGOOD

The Tennessean (Nashville)

If you need an incident report from the Crockett County Sheriff's Department, it's best if you have a familiar face, especially if the sheriff's not around.

At the Greene County Sheriff's Department, getting the public document will take a court order.

Meanwhile, in Woodbury, you might hear "homeland security" as a reason to deny your records request at the Cannon County Sheriff's Department.

Those were among reasons given Nov. 4-5 when 90-plus reporters, college students and volunteers headed in every direction to conduct the state's first public access audit.

None of the reasons given in the Crockett, Greene and Cannon County cases are valid under Tennessee's public records law.

City and county offices in every Tennessee county were visited to assess the availability of public records in each.

The auditors sought the same four documents: the last recorded minutes of a planning commission or zoning board, two recent crime incident reports and crime logs — one each from the local sheriff and a local police department — and the local school system's latest report on the number of expulsions/suspensions for drugs, weapons and violence.

These documents were chosen because they should have been readily available and because they represent the types of documents average citizens might have a reason to see.

How did Tennessee's keepers of public information do?

One third of the time auditors were denied access to information that should be available to anyone.

Some auditors were questioned at length, told to come back, yelled at, forced to show their driver's licenses and, in one county, incorrectly told that a criminal incident report was only available to the victim of that incident.

In Crockett County, sheriff's department personnel told the auditor: "We can't let you see this because we don't know you."

A Greene County sheriff's employee said criminal reports were private. "We don't let just anyone look through those," the auditor was told. Told that the records were public information, the employee replied, "No it's not, not without a court order."

In Van Buren County, a sheriff's deputy told the auditor that "John Q. Citizen" could not walk in and see public records.

In fact, sheriff's departments were not receptive to having a stranger look at crime logs and/or incident reports even though some couldn't explain how they could legally withhold them.

The sheriffs in Greene and Cannon counties were unavailable for comment, but Crockett County Sheriff Troy Klyce said his employees were wrong not to fill the auditor's request.

"When I got back to the office I told them it really didn't matter that I wasn't there. I told them it didn't matter whether you can ID them or not. It's a public record," Klyce said.

The 117 denials out of 356 records requested in the two-day survey indicates the struggle citizens face in seeing basic information collected by their local government.

"Unfortunately, I think too often public officials who we put our trust in either don't understand the laws that exist or, in some cases, choose to ignore the laws," said Tom Griscom, publisher and executive editor of the Chattanooga Times Free Press and president of the Tennessee Coalition for Open Government.

TCOG organized and carried out the statewide project.

"If you're going to have accountability, then those that we trust to carry out the actions of government need to understand those issues are important not only to news media, but to citizens of the state," Griscom added.

The audit showed that what's accessible in one county may not be considered a public record in another.

That's not good, said Dick Williams, Tennessee chairman of Common Cause, a public interest lobbying group whose primary concern is open government.

"Government ought to be open to the public because it represents the public and takes care of the public's interest," said Williams, also a TCOG board member.

TCOG is an umbrella organization comprised of the state's largest print and broadcast media organizations, including The Associated Press, and public interest groups like Common Cause.

"We think that it's in the public's interest to be open. The more the public knows then the better decisions they can make," said Williams.

According to TCOG's executive director, Frank Gibson, the state's Public Records Law and the Sunshine Law, which prevents elected officials from meeting in secret, were model statutes when they were approved in 1957 and 1974, respectively.

Since then, the Legislature has eroded their effectiveness by approving more than 200 exemptions, said Gibson, a veteran Nashville journalist who still works part-time as an editor for The Tennessean.

"It seemed like a good time to have the survey, so we can see where we stand. The open records law is now 47 years old. We wanted to see if there was a problem and if so, what's the cause of that problem," he said.

Gibson said the survey reveals an obvious need for training about what can and cannot be released.

"There was a pattern of excuses given by officials in their denials that are not allowed," Gibson said. He noted that in 25 counties, the sheriff and local police department had policies that conflicted with each other — one would release a record and the other would deny the same document.

Many auditors were asked to show their driver's license even though the state's Public Records Act does not require citizens to identify themselves when asking for a public document.

Nor does the law require a record requester to fill out a form. However, numerous auditors were asked to do so.

"There are only two cases where you have to specifically identify yourself and fill out a form. The first is when you ask to see a police officer's personnel file. That officer can know who's looking. The second is a candidate's campaign financial disclosure. The candidate is informed who came to see it," said Gibson.

Meanwhile, both the federal HIPAA law (officially known as the Health Information Portability and Accountability Act) and the Homeland Security Act were used as excuses in several counties. Neither, according to experts, is concerned with the types of records sought in the survey.

HIPAA is related to the confidentiality of an individual's health information and is directed toward doctors and hospitals. The Homeland Security Act refers to the 2002 legislation establishing the Department of Homeland Security and how it will play a lead role in the war on terrorism.

The HIPAA claim left Alan Johnson, a Nashville lawyer who represents media clients, including The Tennessean, scratching his head.

"HIPAA — that's an absolute new one on me. It clearly applies to health care providers and doesn't apply to sheriff's departments or police officers," said Johnson.

He said law enforcement might be able to claim HIPAA as a reason if medical information were included on an incident report — although such information could be redacted, or marked out, before it was distributed.

"Incident reports usually are pretty simple things, somebody saying that somebody broke into my house last night," he said.

As for Homeland Security as an excuse, Griscom said it's understandable since 9/11 that officials are alert to potential problems, but a heightened sense of caution shouldn't impede the public's right to know.

"The easy answer is to say 'No,' but that also tells you there's been very little training provided about what the law really says," Griscom noted.

"I think the average person when they are denied a record just walks away and doesn't question it. Maybe if nothing else, this survey will raise awareness that people in this state have a right to a lot more information than they realize."

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By The Associated Press

What does Tennessee's Public Record Law say?

Tennessee Code Annotated 10-7-503 states:

"All state, county, and municipal records . . . shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law."

If a document is not specifically exempt, then it is presumed open to inspection. Exemptions include medical records, sensitive military documents, investigative records of the Tennessee Bureau of Investigation.

Many of the 200 exemptions to the law are scattered throughout state law.

OPEN RECORDS AUDIT Q and A

An open records audit primer: why and how

By The Associated Press

The Tennessee Coalition for Open Government recently organized and conducted the state's first audit of public record accessibility.

What is the Tennessee Coalition for Open Government?

TCOG is a nonprofit organization dedicated to preserving the public's right to access government documents.

Members of TCOG include the Tennessee Press Association, representing print media, and the Tennessee Association of Broadcasters, representing electronic media. Other members include The Associated Press, the Society of Professional Journalists, citizen watchdog group Common Cause, and the state's four largest daily newspapers.

Dr. Dorothy Bowles, a journalism professor at the University of Tennessee in Knoxville, and Kent Flanagan, former Tennessee bureau chief for the AP, co-chaired the project.

To reach the group, write: TCOG, P.O. Box 22248, Nashville, TN, 37202 or e-mail: tncog(at)comcast.net.

Why was the audit needed?

Increasingly, media sources from across the state have reported instances where citizens have been denied public documents. Unfortunately, if a person is denied a record, the only remedy prescribed by law is to take the matter to court, an expensive proposition that many people will not pursue.

This played a large role in Tennessee's low ranking in a 2001 joint study by the Investigative Reporters and Editors and the Better Government Association. The Volunteer State was ranked 45th of 50 states.

"Citizens have no place to turn to on these issues," said Frank Gibson, TCOG's executive director. Gibson is a longtime journalist who still works part-time as an editor for The Tennessean.

In order to see if any changes might be warranted, TCOG wanted data on how frequently current laws are being followed, or ignored.

How was the audit conducted?

More than 90 people from around the state were assigned to visit one, and in a few cases, two counties.

The government offices had no prior knowledge of the audit. Steps were also taken to send auditors to counties where they were not known.

The four documents auditors asked for were basic records that should be available under the state's Public Records Law.

"We chose basic things, looking for information about crime in your neighborhood, conditions in your child's high school and actions by your government that may affect your property values," Gibson said.

Because this was a testing of the record keepers, auditors were instructed how to respond to questions they might encounter. If at all possible, auditors did not immediately reveal their identities.

To make sure this test resembled, as nearly as possible, what a citizen would face, reporters participating in the survey were told not to disclose they were members of the media unless they were asked specifically about their jobs. They were instructed then to acknowledge their position and name of their publication.