

Audit shows too many school officials refuse access to public records

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

By SCOTT BARKER

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KNOXVILLE (AP) — Here's the test:

You're a public school system administrator in Tennessee. A citizen comes into your office and asks to see the district's state-mandated zero-tolerance report. Your reaction is to ...

- a) Show the report to the citizen and make a copy if asked;
- b) Ask the citizen to come back at a more convenient time and provide the document then;
- c) Grill the citizen about his or her intentions before begrudgingly providing the report; or
- d) Refuse to provide the report or delay your response so long that the citizen gives up.

According to a statewide audit conducted earlier this month by the Tennessee Coalition for Open Government, too many administrators — four in 10 — chose the last option.

Audit results show officials at 36 of the 91 school systems surveyed denied or indefinitely delayed action on records requests. Only 60 percent of school systems supplied the records within 48 hours.

"That's failing by any measure I can think of," said Frank Gibson, executive director of the coalition and an editor at The Tennessean in Nashville. "If you made a 60 on a paper, you wouldn't pass."

The Tennessee Coalition for Open Government conducted the audit Nov. 4-5. The coalition is an alliance of newspapers, television stations and citizen groups that works to ensure compliance with state open records and meeting laws.

Journalists, students and citizen volunteers fanned out across the state to see how school boards, law enforcement agencies and planning organizations responded to document requests from citizens.

When checking schools, auditors asked for the reports on the number of students disciplined for possession of drugs or weapons or for violent conduct. They asked for the school system as a whole, plus reports for one high school in every district.

Overall, one out of three government offices audited denied access to documents, and only sheriff's offices had a lower rate of compliance than school systems.

At school district offices across the state, auditors met with delays and resistance, Gibson said, even in counties that complied. Only 34 received the records on their initial visits.

Organizers chose to ask for zero-tolerance reports because they are clearly open records and usually non-controversial. The schools report does not identify students.

Under Tennessee's Public Records Law, 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."

Randall Bennett, assistant executive director and legal counsel for the Tennessee Organization of School Superintendents, said the zero-tolerance report should be available to citizens who ask for it.

"We've still got some work to do, and I think we recognize that," Bennett said. "But if we've got 50 percent or more who do what they're supposed to do, I'm happy with that."

Unless directly asked, the auditors did not reveal who they were or why they wanted the records in order to replicate the experience of ordinary citizens. There is no legal requirement for citizens to explain their interest in records or how they intend to use the information.

"The use of public information can't be restricted," Gibson said.

Citizens can use the reports to compare schools. For example, parents moving to Knox County could compare Halls High School to nearby Central High School. Though roughly the same size, Halls reported only one drug-related offense in 2003-2004, while Central reported 10.

School administrators in Sevier County said they routinely field requests for disciplinary information. Others, like those in Perry and Lincoln counties, said no one had ever asked for the reports.

In many counties, auditors encountered suspicion and delays. Some systems refused to supply the report because they said the reports contained student names, though the state law doesn't require names be included.

Sumner, Robertson and Knox counties simply marked out the names before turning over the report.

Officials in Union and Carroll counties said they didn't even know they were required to keep the records. One school worker in Wilson County told the auditor that only parents of suspended students were allowed to see disciplinary reports.

Some auditors got into confrontations with officials who demanded personal information or explanations before turning over the document.

Barbara Turner, a supervisor with Gibson County Schools, demanded to know the identity and workplace of auditor Laura Lytle, as well as the reason she wanted to review the records.

Turner told Lytle she didn't think the schools had had a zero-tolerance violation, but she didn't allow the auditor to see the records. Nor did Turner call Lytle, as promised, after checking further.

McNairy County Schools Superintendent Charlie Miskelly told an auditor that his system had suspended 15 students, but wouldn't allow a review of the records and wouldn't provide a breakdown by school.

"He was very suspicious about (my) request," auditor Sherri Osteen said. "I was grilled relentlessly by the two office women and director about my reason for the requests."

The superintendent of White County Schools, Donny Haley, told an auditor, "Well, if you aren't going to tell me why you want it, then you ain't going to get no record."

Haley later relented and turned over the record during the initial visit.

Not all officials erected roadblocks. Several counties granted the requests within minutes, no questions asked, and some administrators took extra steps to make things easier for auditors.

The auditor who went to Jefferson County reported that it took less than two minutes to obtain a copy of the report. A school employee in Lake County noticed the type on the report was small and recopied the document to make it easier to read.

"In many of the 55 (counties) that were granted, it was obvious people knew what the law was and they were happy to comply," Gibson said.

The Tennessee Organization of School Superintendents provides training and legal advice to school administrators on state and federal records laws.

"The fact that so many complied is a testament to training we provide school systems and school administrators," Bennett said.

But Gibson countered that the number that didn't comply indicates more training is needed.

Gibson said the large number of denied records backs up a study, conducted by the organization Investigative Reporters and Editors and a Chicago-based government watchdog group, which ranked Tennessee's open records law as the sixth worst in the nation. The Tennessee law doesn't hold officials accountable, he said.

"The only way to enforce it now is to go to court," Gibson said. "That can be very expensive."

Scott Barker is a reporter for The Knoxville News Sentinel. He can be reached at 865-342-6309 or at [barkers\(at\)knews.com](mailto:barkers(at)knews.com).