

It ought to be easier to know what your government has on file

By **FRANK GIBSON**

TCOG Executive Director

It was not as easy as it ought to be.

That's the fairest assessment of last month's public records compliance audit by the Tennessee Coalition for Open Government. Journalists and private citizens audited city and county offices in all 95 counties. The results of their inquiry were published statewide, starting Thanksgiving Day.

"Your Right to Know" was the inaugural project of the non-profit organization, created last year as a public and press alliance to help improve and preserve access to government information through research and education.

TCOG wanted to answer a few simple questions:

"What happens when a citizen walks into a public office and asks to see a basic public record? How is he or she treated?"

They were legitimate questions, prompted by a series of events and disclosures.

A survey by Mason-Dixon Polling & Research Inc. of Washington raised questions about Tennessee's public records and government in the sunshine laws. When the pollster asked 400 "regular" voters in January whether "state and local governments in Tennessee operate more in secret or more in the open," half the respondents chose "in secret." Just over a third (37%) said "in the open," and 13% didn't know or wouldn't venture an opinion.

We wanted to know if the perception was real or imagined. If it was real, what was the major cause? But, there was more to it than that.

A national survey by Investigative Reporters and Editors and the Better Government Association ranked Tennessee's sunshine laws near the bottom among the 50 states. Our laws were slammed because the only recourse for a citizen - and the news media - to enforce them is through risky and expensive litigation.

The audit was about more than media access to public information. That's why auditors went in as "citizens" first instead of flashing press cards.

Ask Jennifer Howell, a citizen of Moscow, Tenn. It took the Fayette County taxpayer six weeks to get a copy of the town's monthly financial report - the same report she saw distributed to aldermen at the regular Moscow Board of Mayor and Aldermen meeting.

In the same vein as "the dog ate my homework," she got all the excuses imaginable: No extra copy was available. Then the city official who prepared the report allegedly left it at home the next day. Finally, it couldn't be released because it was an attachment to the minutes of the meeting and the minutes couldn't be released until they were approved at the next monthly meeting.

When another citizen asked for the same report weeks later, according to Howell, city officials told her to get it from Howell.

Ask Richard Thompson, now a member of the Maury County school board. He had to sue the city of Columbia in 2001 to get a memo written and given to the City Council by the then-city manager. A reporter spotted the lawsuit and asked for the record herself. It took 2 1/2 hours before she got it. Thompson got to read it on The Tennessean's Web site.

In Knoxville, the sheriff refused a county commissioner's request for records of money spent on his helicopter and horse stable operations. A judge subsequently fined the sheriff \$300 for contempt of court for continuing to resist. The Knoxville News Sentinel reported later that the sheriff's appeals - all the way to the Tennessee Supreme Court (where he lost) - cost Knox County taxpayers \$93,000 even though the state Court of Appeals ruled the \$300 fine had to come from the sheriff's pocket.

No telling how much the county commissioner's legal bills will be.

The 112 volunteers who conducted the state's first-ever audit did not set out to embarrass anyone. They wanted to see if the Moscow, Columbia and Knox County cases were common. Most auditors were young journalists joined by a dozen or so private citizens. No one set out to practice "gotcha" journalism. They simply wanted to simulate the "citizen" experience.

The answers we got were:

Auditors found themselves leaving empty-handed a third of the time: 12% without the last approved planning commission minutes, 35% without police incident/offense reports or crime logs, 40% without state-mandated school drug and violence reports and 45% without crime information kept by local sheriffs.

One sheriff e-mailed a constituent that TCOG "and the media's coverage of their auditors' findings were somewhat misleading and, to some degree, deceiving." He earlier had told a reporter that his office was simply protecting taxpayers and crime victims from telemarketers selling security alarms. Instead of telling that to the auditor - in this case, a "demanding" lady who was one of our citizen auditors - his office simply denied her request. The sheriff's office didn't tell her they feared she was a telemarketer. They just denied her request. If someone had told the auditor that, she might have reminded them that Tennessee has a "do not call" registry for that purpose.

The most often-heard reasons for denial were: "desk clerk not authorized to release the record and supervisor not available," "office personnel too busy, auditor asked to return another day," "record exempt by the Public Records Act," "record doesn't exist."

Statistically, it can be argued, the audit results did not confirm the poll's finding because a majority of the requests were granted on the initial visit or within 48 hours. But the state constitution and the laws that codified it do not speak in terms of majorities. The constitution talks about the freedom of "every person," and the records law talks about the right of "any citizen" to inspect records.

How were the "citizens" treated?

In many cases, they were treated with respect and received good customer service. Record custodians went out of their way to comply without giving auditors an inquisition. I

In others, they were treated shabbily, with suspicion and disdain. Some offices demanded positive identification and personal information before telling the auditor the information was confidential or not available anyway.

In one Midstate county, the auditor was surrounded by sheriff's deputies, had his driver's license taken away for 30 minutes, and checked out while he was questioned.

The major finding, though, was that in many offices, it was clear employees were not sure what the law says or what it means.

TCOG's board has already committed to doing what it can to help with training where it is needed and where it is wanted.

It should not be this hard.

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