

Editor's note: This article was published in The Seattle Times on Aug. 5, 2010. It has been slightly edited for this website.

Citizen vigilance insures open government

By Mike Fancher

Citizen vigilance is the linchpin that keeps government open and transparent. Washington residents proved this in the early 1970s when a citizen's Coalition for Open Government pushed for passage of Initiative 276, which began the modern history of open government legislation in our state. Today we have laws that are intended to preserve public trust in government by providing open meetings, access to public records, and public disclosure of campaign finances, lobbying and financial affairs of elected officials.

Yet, the forces that would erode open government are relentless. Examples abound:

- When the open government law passed in 1973 there were only 10 exemptions to the public-records section. Today there are more than 300, with dozens of new exemptions proposed every session of the legislature. The legislature itself has a special limited definition of legislative records, so they are not treated like other government records.

- In 2007 a national study gave our state an "F" grade and listed it among the states whose freedom-of-information laws need reform. That same year, the state created a Sunshine Committee to review exemptions to the public-disclosure law.

The committee hasn't accomplished much, and attempts have been made to kill it. But it has recommended making all legislative records subject to the Public Records Act unless explicitly exempt, just like other government records.

- After this year's legislative session, Democratic leaders were widely criticized for secrecy in handling the state budget. Hearings were held without adequate notice. Bills were discussed although they had titles but no text. Some final votes were taken the same day the details of bills were made public.

- State audits show that government agencies, small and large, often abuse executive session provisions to open meetings. In 2008, city and county government officials from around the state fought ferociously to kill a bill that would have required tape recording executive sessions.

Court rulings have also contributed to the erosion, especially in the area of lawyer-client privilege. In the Hangartner decision in 2004, the state Supreme Court ruled 5-4 to greatly expand the exemption for communication between agencies and their lawyers, so that advice on ordinary matters can be withheld from the public.

In its 2007 *Soter v. Cowles* decision, the Supreme Court ruled 5-4 to allow agencies to hire outside lawyers to conduct internal investigations and then keep the results secret. A Seattle Times editorial

said the decision had “given public agencies a road map for keeping embarrassing information secret.”

Last year the Supreme Court ruled that the judiciary in Washington is exempt from public disclosure requirements under the state's Public Records Act. The court said the law defines "local agency" as a “county, city, town, municipal corporation, quasi-municipal corporation, or any special purpose district, or any office, department, division, bureau, board, commission or agency thereof, or other public agency" and courts do not fall under that definition.

A 2008 state audit of the 30 government units found that most responded cooperatively and in a timely manner to public records requests. But exceptions occur, and when they do, taxpayers get the bill.

The city of Mesa in Franklin County was fined \$246,000 in 2009 for failing to release requested public documents in a reasonable time. Also last year, Prosser in Benton County agreed to pay \$175,000 to settle a public-records suit. This year King County was ordered to pay \$371,000 in a 1997 suit over monorail records.

Each of those cases resulted from citizen requests for public records, which reinforces the importance of citizen vigilance. It requires that citizens be familiar with open-government laws and with the resources available to help, including the Washington Coalition for Open Government. WCOG, founded in 2002, is an independent, non-partisan, non-profit organization that includes citizen activists, government officials, and representatives of business, labor, media, law, and public policy organizations. It is vigilant in working through the courts and the legislature to defend and strengthen Washington’s open government laws.

So far this year, WCOG has presented awards to 11 individuals and groups who have stood up for open government. It also conducts free public forums throughout the state to help citizens understand the importance of open government and how to use the law effectively.

WCOG’s legislative priorities for 2011 include:

- Restoring the original intent of the attorney-client communications exemption.
- Expanding access to legislative and court records.
- Exempting recordings of executive sessions, so that bodies that are willing to record the session will do so.
- Creating a non-judicial process for review of public records and open meetings disputes.
- Requiring open government training for government employees and elected officials.
- Improving preservation and access to electronic records.
- Requiring agencies to scan paper records into electronic form if requested.
- Continuing the Sunshine Committee.

The spirit behind WCOG’s efforts can be found in the preamble to Washington state’s open government law, which says:

“The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for

the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”

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