



New England First Amendment Coalition

# The NEFAC Report

New England's monthly right-to-know dispatch

March 2011

Prepared by the [New England First Amendment Coalition](#) in partnership with Northeastern University

The monthly *NEFAC Report* monitors print and online coverage of public access issues in the six-state region. Visit our [Website](#) for the NEFAC blog, media updates from around New England, guides to the states' right-to-know laws, legal contacts and more.

## FOI request yields evaluations of top city hall staff

NEW HAVEN, Conn. - Amy Meek is an "unselfish" new member of the mayor's team and needs to "be more assertive," according to her boss's evaluation. Police Chief Frank Limon is doing a "satisfactory" job-without further explanation.

Those two examples emerged in the latest round of job performance evaluations of 44 top City Hall employees.

The annual evaluations, completed in December through March, were released to the Independent Tuesday following a Freedom of Information request. The mayor evaluated seven top coordinators; those staff in turn evaluated their supervisees.

The forms reflected how top staffers are doing their jobs, as well as how top officials choose to grade them in the light of public scrutiny.

The evaluations used to remain out of the public eye. Then the city lost a Freedom of Information Commission case filed in 2004, and now must release the forms to the public by request. As a result, Mayor John DeStefano revised the evaluations to include less information. Workers are now graded as "satisfactory" or "unsatisfactory," and must simply initial that they have discussed their performance across 11 categories.

[Read more](#)

- *Melissa Bailey, New Haven (Conn.) Independent*

3/16/11

## Advocates say VT public records can be too pricey

MONTPELIER, Vt - Public records of government actions are generally free. But sometimes, getting access to them can get expensive.

In Vermont, experienced litigators charge up to \$300 to represent people or newspapers suing government agencies to get access to public records they've been denied.

"If the case is entirely simple, it can cost in the neighborhood of \$5,000," said Robert B. Hemley, a Burlington lawyer who handles such cases. "If it's more complicated and results in an appeal to the Vermont Supreme Court, the cost can be \$25,000 to \$30,000."

Open government advocates say those fees are having a chilling effect on those who would go to court after being denied access to a record. And they're driving an effort in Vermont to amend the state Public Records Act with a slight but momentous change - saying courts "shall" require reimbursement of winning plaintiffs' legal fees in such cases, instead of "may," as the current law says. [Read more](#)

- *John Curran, The Associated Press*

3/14/11

## Open meeting law working as expected - not well

In the nine months since the state's new Open Meeting Law has been on the books, Robert J. Ambrogi said it has worked out pretty much as well as he thought it would.

That is to say, it hasn't worked out very well at all, he said. "My biggest complaint is what my biggest complaint has been all along," said Ambrogi.

The new law, he said, has no teeth.

Ambrogi, a Cathedral High School graduate, works as a lawyer in Rockport. He is also executive director of the Massachusetts Newspapers Association, and in his spare time authors a blog dealing with First Amendment issues.

A critic of the law when it was proposed, Ambrogi remains a critic after its ratification.

His biggest complaint is it doesn't go far enough to deter any politicians or government officials who might be inclined to operate away from public scrutiny.

"Across the county, Massachusetts has one of the weakest open meeting laws in terms of enforcement," he said. "There is no incentive for public officials to comply with the law." [Read more](#)

*- Patrick Johnson, The Republican, Springfield, Mass.*

3/14/11

## MA open meeting laws don't apply to their makers

In Massachusetts, local officials work under strict state laws to make sure municipal business is conducted openly. But the state lawmakers who enacted these laws included a notable exemption: The laws don't apply to them. The Senate and the House of Representatives can deliberate behind closed doors and freely deny access to its records.

"A whole lot of things that would not fly in town government are perfectly legal and standard practice in the Legislature," said Pam Wilmot, president of Common Cause Massachusetts.

This year, close to two dozen bills have been filed to try to change that. It's a bipartisan push from senators and representatives who have proposed lifting the exemption altogether.

Some want to improve access to public records, making sure they go online whenever feasible, and require that videos of public hearings and meetings get posted on public websites. [Read more](#)

*- Nancy Reardon Stewart, The Patriot Ledger, Quincy, Mass.*

3/13/11

## Coakley to review UMass trustees' closed meeting

BOSTON - The state attorney general says she will review the actions of the trustees of the University of Massachusetts for possible violations of the state Open Meeting Law when they met in closed session in January to question three finalists for the president's job.

Attorney General Martha M. Coakley's review should help clarify a section of the Open Meeting Law that regulates interviews for finalists for positions. Coakley took over enforcement of the law on July 1 from district attorneys.

The Republican had asked Coakley about the Jan. 13 closed session as part of Sunshine Week, a national effort starting Sunday and led by the American Society of News Editors to promote a discussion about open government and freedom of information.

*- Dan Ring, The Republican, Springfield, Mass.*

3/13/11

## NH gets C- on new budget transparency effort

CONCORD, N.H. - Opening New Hampshire's checkbook for the public to see is all about the money -- the lack of it, that is, to pay staff to do the work in lean fiscal times.

The state opened a window into its finances in December when it launched Transparent NH, a website showing the sources of state money, how it is spent and an outline of the budget process, which includes links

to budget documents.

The public also can search what the state pays its workers.

But Administrative Services Commissioner Linda Hodgdon says lack of money to fund the project means progress is slow. She would give the state a C-minus for its effort.

"This is less about this being possible and more about resources," she said. [Read more](#)

*- Norma Love, The Associated Press*

3/13/11

## MA developer wants permits before identifying business

It's no secret that some public officials in West Bridgewater have no qualms about keeping secrets from the public. That is why it is troubling that a company wants to build a 77,000-square-foot retail business on Route 106 - yet the developer refuses to name the business.

All three selectmen - including two who recently forced The Enterprise to pay \$810 to gain access to some public documents - have asked for the information. Selectman Eldon Moreira - who was the only selectman who said The Enterprise and the public shouldn't have to pay for public records - said he has received complaints about "running the town in secrecy."

He said Waterstone Development, which has been acquiring permits for the new building, has a legal obligation to reveal what business is coming to town.

"The information belongs to the people," Moreira said. "They have a right to know."

Of course they do. It should be obvious. That doesn't mean the public should have the right or ability to prevent a legitimate business from coming to West Bridgewater. But why the secrecy? [Read more](#)

*- The Enterprise, Brockton, Mass.*

3/10/11

## ME governor: new advisory groups to be FOI exempt

Gov. Paul LePage said Wednesday that he plans to form more advisory groups that will be exempt from Maine's freedom of information law, in addition to the business council he created by executive order last week.

Beyond the business community, LePage said, he wants to meet with teachers, people in higher education and environmentalists to get ideas for improving the state.

"It's all about having a think tank of people that can be frank and honest and tell you what's going on," he said at the Blaine House. "And then from there, I bring it to my staff and see if we can help."

LePage's order exempts the business council from the state's Freedom of Access Act, which means its meetings and records will not be open to the public. [Read more](#)

*- Rebekah Metzler, The Portland (Maine) Press Herald*

3/10/11

## Shumlin ditches snow to take it slow on Caribbean isle

MIDDLESEX, Vt. - Gov. Peter Shumlin ditched his security detail and snuck off for a six-day vacation on the Caribbean island of Dominica, he revealed Wednesday.

"We thought it best that the little island of Dominica didn't know I was governor," Shumlin said at a news conference. "They didn't. I met a lot of my friends. They called me Peter. It was great to be an ordinary citizen for a few days."

While he was away, Vermont was pounded with its third-biggest snowstorm on record. Lt. Gov. Phil Scott, as acting governor, made the decision to shut most of state government down Monday.

Shumlin's vacation - from Thursday morning to early Wednesday morning - drew attention after a spokeswoman said she didn't know where he was late last week. [Read more](#)

## What are VT governor's rights to privacy?

MONTPELIER, Vt. - It made national headlines: Vermont's governor... missing. But Gov. Peter Shumlin says he wasn't missing. As Vermonters battled one of the worst snowstorms in state history, the governor was vacationing on the remote island of Dominica in the Caribbean.

"I met a lot of my friends. They called me Peter. It was great to be an ordinary citizen again for a few days. That is why I didn't disclose where I was," said Shumlin, D-Vermont.

Which raises the question-- what rights to privacy does an ordinary citizen give up when he or she becomes governor?

"I think any public official sometimes wishes that they could just go back to being a regular man or woman occasionally," political analyst Eric Davis said.

Davis says financial disclosures warrant the lowest expectation of privacy, family matters the highest, and vacations fall somewhere in the middle.

"When the press inquired where the governor is, the staff should simply say he's on vacation but don't necessarily give the details," Davis said.

Only two members of his senior staff knew where he went, leaving constituents with mixed reviews.

- *WCAX.com, Burlington, Vt.*

3/11/11

## VT College paper wants to know how \$\$\$ divvied up

The Student Government Association doesn't allow students to know how much money there is to be divided up between the clubs before the budgets are passed.

Students are also not allowed to know the actual numbers in secret ballot votes.

Those are the facts. Anytime the SGA president uses the words "completely hidden," to describe something, it indicates a secret. Those are the exact words he used to describe the 'magic number'.

We are also told that the clubs have a say in their budgets. However, club reps were not allowed to speak at the finance committee meetings or answer questions; questions that could have easily been answered by thoroughly reading the budget packets.

I understand these meetings were all "open meetings," but how open are meetings that club reps are discouraged from attending and no one can speak or answer questions that would be easily answered? Vote totals are not recorded in the minutes of the SGA meeting. We are told that these numbers are kept secret because they are by secret ballot votes. Well, correct me if I am wrong, but lots of votes in our country are by secret ballot, and we are allowed to know the vote totals of those elections. [Read more](#)

- *Sam Monroe, The Critic, Lyndon (Vt.) State College*

3/10/11

## Father of murdered family says autopsies should be sealed

HARTFORD, Conn. - Dr. William Petit Jr. told members of a legislative committee Monday that he supports a proposal that would allow the parents of children who were murdered to seal autopsy reports from public disclosure.

Petit, whose two daughters and wife were brutally murdered during a July 2007 home invasion in Cheshire, said the proposed legislation being considered by the General Assembly Joint Committee on Judiciary "would protect the dignity of children who are murder victims and their families."

Petit gave his testimony during a hearing conducted by the committee at the Legislative Office Building; he did not make reference to the autopsies in his own family's tragedy.

"As a doctor, I'm not allowed to release your records as a patient," Petit told members of the legislative panel. "I'm not sure that once you're dead you should lose rights to privacy." [Read more](#)

## Contested minutes yield more questions than answers

HOLYOKE, Mass. - The records yielded more questions than answers.

The Republican reviewed 56 pages of minutes and notices of meetings of the board of trustees of the Holyoke Soldiers' Home dating to early August in relation to the search for a new superintendent and the choice of Paul Barabani, 60, a retired Army National Guard colonel and former administrator at the U.S. Veterans Administration Medical Center in Northampton.

Minutes and notices are normally the most basic of public records, immediately accessible upon visiting a city or town hall, under state public records law Chapter 66, Section 10.

But the administration of Gov. Deval L. Patrick required that The Republican file a written request for copies of the minutes and notices, which was done by e-mail Feb. 17.

The records were e-mailed to The Republican March 2 by Jennifer Kritz, spokeswoman for the Executive Office of Health and Human Services.

Soldiers' Home Board Chairman Steven E. Como told The Republican early last month that the board recommended a candidate for the superintendent job, which turned out to be Barabani, to the state in early November. [Read more](#)

- *Mike Plaisance, The Republican, Springfield, Mass.*

3/7/11

## AG says Natick panel violated open meeting law

The state Attorney General's office rebuked the Natick School Committee in a Feb. 1 letter, saying the committee violated the Open Meeting Law during an Oct. 2010 meeting.

At issue was whether the School Committee failed to properly give notice about discussions and votes on several Fall Town Meeting warrant articles, according to the letter.

Instead of indicating the committee would discuss and vote on the articles—one of which affected the School Committee—the committee listed only "Town Meeting Update" on the meeting's agenda, according to the letter.

According to the Open Meeting Law, committees must give at least 48 hours notice about topics to be discussed with "sufficient specificity to reasonably advise the public about of the issues to be discussed at the meeting." [Read more](#)

- *Megan McKee, Boston.com*

2/23/11

## Request for top pensioners list headed to NH high court

One year after the New Hampshire Union Leader filed a right-to-know request with the New Hampshire Retirement System, the agency has yet to release the names of its top 500 pension earners and how much each received in 2009.

The case now is headed to the Supreme Court.

According to the state retirement system's 2009 annual report, the system is 58 percent funded, falling below the recommended 80 percent. The request for these 500 names and the amount each receives annually was initially made to shed light on the state pension system, how the amounts of the state's highest pensions were reached and whether reform could help bridge the pension funding gap.

"I think it sensitizes people to what's going on. When you find the principal of the local school was awarded a pension over \$80,000 a year, it makes people more aware that things may be out of kilter," said state Rep. John Reagan, R-Deerfield, one of the state's leaders in pension reform. "When you work for tax money, it's public information." [Read more](#)

- *Beth Lamontagne Hall, New Hampshire Union Leader*

## RI lawmakers closed up during session's final stretch

PROVIDENCE - Secretary of State A. Ralph Mollis, a Democrat, has issued a report patting the leaders of the Democrat-controlled General Assembly on the back for their voluntary 92-percent compliance with a law they do not believe applies to them - the Open Meetings Law - except in the crucial end-days of the 2010 legislative session.

State lawmakers have long asserted they are exempt from the law they have imposed on all other public bodies in Rhode Island. But the report issued by Democrat Mollis on Friday suggests they nonetheless complied with its requirements, including the 48-hour advance notice requirement, "92 percent of the time."

The "Access 2010" report says that "28 of the 31 total open meetings violations occurred during their final six days of work."

The report documents what General Assembly watchers know: that most of the violations take place in the final days of the six-month legislative session, when most of the important decisions are made, votes taken, and notice requirements suspended. Committees have been known to meet on the balcony outside the House lounge, to vote on bills introduced moments before. [Read more](#)

- Katherine Gregg, *Providence Journal*

2/21/11

NEFAC plays host to the National Freedom of Information Coalition's 2011 conference at the Biltmore in Providence, R.I., May 20-21. Watch for separate mailings with details on the agenda, hotel reservations.

### Comments welcome.

Send to *The NEFAC Report* editor Larry Laughlin, [lmlaughlin@gmail.com](mailto:lmlaughlin@gmail.com).

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