Ohio Coalition for Open Government

OPEN GOVERNMENT REPORT

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Ohio open government bill passes Senate and moves to House

By Monica Nieporte, OCOG President

As we wind down the summer months, we have some exciting developments to share with members about the status of our bills in the legislature.

Senate Bill 293 was introduced earlier this year and would add open meetings disputes to the Court of Claims process. It was voted upon in June and passed the Senate unanimously! It has since been introduced in committee in the House and we are hoping it moves along swiftly there as well.

This is especially important now with the temporary changes to open meetings laws that allow government bodies to restrict in-person attendance at meetings. Though this is due to the pandemic, there will undoubtedly be some that will want to continue teleconferencing meetings after this

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Governor Mike DeWine addresses reporters at a news conference earlier this year. During the initial weeks of the COVID-19 pandemic, a time period which coincided with the annual Sunshine Week focused on open government, Gov. DeWine and his administration received national praise for their daily press conferences about the latest COVID-19 statistics.

For more more on the importance of open government during a public health emergency, see the commentary by Tyler Buchanan of Ohio Capital Journal on page 4.

Remote meetings and public access

By Brian Fox and Jack Greiner

Earlier this year, responding to the COVID-19 pandemic, Governor Mike DeWine signed Amended Substitute House Bill 197 ("H.B. 197") into law. Among other things, H.B. 197 modified the rules governing public meetings while the statewide emergency declared in Executive Order 2020-01D remains in effect, including requirements for in-person attendance and quorum, notice, and public access. These modifications remain in effect and will impact how the media covers local government.

I. Attendance & Quorum – Section 12(B)(2) of H.B. 197

Public meetings and hearings may be conducted by teleconference, video conference, or other similar electronic technology. Members of public bodies, likewise, may "attend" meetings and hearings through the same means, participating and voting remotely. Remote attendance now counts towards quorum requirements.

Prior to this change, the Open Meetings Act required that members of public bodies be physically present to participate in meetings. The need for social distancing has for now made that requirement obsolete.

II. Notice – Section 12(B)(3) of H.B. 197

In pivoting to remotely-attended meetings, local governments are only required to provide notice of meetings and hearings held "under this section" 24 hours

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Inside This Issue

Ohio Coalition for Open Government

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Ohio open government bill passes Senate and moves to House

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is over. It's good to establish the ground rules of such changes up front. H.B. 197 allowed for limited in-person access but also said the meetings must still be properly noticed and there must be a way for the public to view the meeting either via live-stream or video. This isn't happening universally and right now there is no quick, efficient way to get a ruling that it isn't permissible.

Even before the pandemic, there was a need for this change. There have always been some public bodies who flout sunshine laws and then profess ignorance that they were in violation. In some of these cases, they are just betting on the fact that no one wants to wage an expensive and lengthy legal battle over the issue so they persist. S.B. 293 would make legal action a more realistic outcome because of the low filing fee and expedient process. Just knowing the process is now available for open meetings disputes is a deterrent in and of itself.

A recent case out of Greene County provides yet another example of why a more expeditious process is beneficial to all parties.

The Greene County Common Pleas Court ruled in August that the Bellbrook-Sugarcreek School Board violated open meetings laws by holding illegal meetings through private emails and texts. This is not a new issue but unfortunately it takes a civil court case to correct the problem which is a long and expensive process.

Nieporte

If our bill becomes law, this will enable a citizen or the media to file the allegation of a violation for a $25 fee with the Ohio Court of Claims and because of the swift timetable for that process, it will provide more immediate correction to the behavior and far less legal fees than a lengthy court battle.

In this particular case, the issue involved discussions around a May 2019 levy. The school board was also found to have violated open meetings laws for going into executive session to discuss matters that did not fall into the very specific reasons a public body is allowed to convene an executive session. The school board was fined $3,000 plus attorney fees, which have yet to be calculated.

State Auditor Ketih Faber and Senate President Larry Obhof have been backing our efforts in this area and we appreciate the support of Senators Nathan Manning and Louis Blessing, who co-sponsored the bill.

Public notices booklet available

One of the critical components of an open government are timely public notices published in newspapers, where readers know to look for them. Public notices inform citizens of the everyday activities of government. From government spending to developing new policies, it is important for people to be informed of actions taken by public officials that affect citizens' everyday lives. Public notices are essential to a democracy and an informed citizenry. Without public notices, citizens cannot properly and adequately make informed decisions.

The Ohio News Media Association runs the state's official public notices website at www.publicnoticesohio.com at no cost to the citizens of Ohio. This website reprints all the local and statewide government notices published in newspapers across Ohio.

To learn more about why public notices are so important, go www.publicnoticesohio.com/Public-Notice-Law.aspx. On that page you can also download a brochure explaining the complete history of public notices in our country and why our democracy couldn't exist without them.

Remote meetings and public access

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in advance of the meeting to the public, to media that have requested notification of a meeting ("requesting media"), and parties required to be notified ("required parties"). The notice must provide the time, location, and manner by which meetings will be conducted such that "any person may determine" those details. However, if there's "an emergency requiring immediate action," the last sentence of Subsection 12(B)(3) authorizes an ad hoc meeting so long as the requesting media or required parties are immediately notified of the time, place, and purpose of the emergency meeting or hearing.

Under R.C. 121.22(F), which presumably still governs meetings and hearings not held "under this section," there are three types of meetings – regular, special, or emergency. With respect to regular meetings, public bodies are required to provide notice of the time and place for the meeting. With respect to special meetings, public bodies are required to provide 24 hours of advance notice of the time, place, and purpose for the meeting. With respect to emergency meetings, the member or members calling the meeting are required to provide notice to the requesting media immediately.

Section 12(B)(3), H.B. 197 seems to temporarily abandon the concept of regular and special meeting notice provisions to create two types of meetings during the declared emergency: (i) "meetings held under this section," which require 24 hours of advance notice to the public, requesting media, and required parties; and (ii) "emergency meetings," which require immediate notice to the requesting media and required parties. Although the statute doesn't define the phrase "meetings held under this section," presumably, any meeting in which members or the public attend remotely is a "meeting held under this section."

III. Access – Section 12(B)(4) of H.B. 197

When conducting remotely-attended meetings, the public has to be able to attend and participate in a manner "commensurate with the way in which the meeting or hearing is being conducted," regardless of whether the meeting is conducted by live-stream, radio, television, or teleconference. Applying the plain language of H.B. 197, the "commensurate access" requirement means meeting platforms should mirror the public's access. By way of example, if the public meeting is being conducted through one of the more popular online video conference platforms (i.e., Zoom or Webex), then the general public should be able to observe the meeting through a link to the same online platform, even if their capacity to interrupt or interject during the meeting is restricted by the platform's moderator.

Curiously, the last sentence of Section 12(B)(4) appears to contradict H.B. 197's more broadly expressed authorization for meetings by teleconference inasmuch as it specifies the public be able to "observe and hear the discussions and deliberations of all the members of the public body, whether the member is participating in person or electronically." Maybe a drafter's oversight or imprecision, the word "observe" in that context connotes visual observation or viewing, especially when paired with the word "hear" by conjunction. Teleconference, on the other hand, naturally suggests telephone participation (or by audio means alone). That said, Section 12(B) provides, "[d]uring the period of the emergency… members of a public body may hold… meetings…by…teleconference" and Subsection 12(B)(4) continues, "[t]he public body shall provide the public access…commensurate with the method in which the meeting…is being conducted, including…call in information for a teleconference."

This ambiguity begs the question. Is visual access to meetings mandated so the public can see and hear discussions and deliberations among members? Or is "observe" better interpreted to mean "take note of," given the multiple references to teleconferences. As a practical matter, the safest course would appear to be (i) confirm the platform mirrors the access, and (ii) allow the public visual access to meetings by using one of the more ubiquitous online video conference platforms.

IV. Logistical Issues: Agenda Anticipation

Local governments will be well advised to carefully prepare for remote meetings. And the local media should make sure they do.

For example, local governments should anticipate how technological issues could impact agenda items, discussion and deliberation, and the public's access. Some questions to consider:

- Do the meetings usually allow for public participation? In this context, what form will that participation take?
- Who will serve as the platform moderator for the meetings, if anyone? The Mayor? Board/Committee Chair? Law Director/Solicitor? Manager/Administrator?
- If something should go wrong during the meeting, who has been trained to fix issues that surface? Is there an IT professional on speed dial?
- Are members of the public body trained to use technology on their own devices? Who can they contact if they have trouble participating during a meeting?
- What about meeting flow? Does the public body customarily adjourn for Executive Session? How will the body flex its technological platform to accommodate an adjournment? Will the "public record" consist of pre-and-post-Executive Session meetings, or just one meeting with intermittent silence on the record?
- Speaking of records, what about public records compliance obligations (R.C. 149.43)? Does the public body have enough server space to store remote meeting videos? Does the platform automatically transcribe the meeting? What features on the technological platform are automatically activated?

As we noted at the top of this article, H.B. 197 is in effect only so long as the statewide emergency remains in effect. But it's a good bet remote meetings will survive the pandemic. The media should stay vigilant to ensure that the transition does not impair the public's right to know.

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Open Government Commentary

During Sunshine week, Ohio leaders showed value of open government in a public health crisis

Editor's Note: *Sunshine Week, the annual nationwide celebration focused on access to public information, ran this year from March 15 to 21. This year's Sunshine Week took place just as COVID-19 began to spread in the United States, providing an ongoing lesson on the importance of open govenment and free access to information during a national emergency. While this commentary was published earlier this year during Sunshine Week, it remains relevant as the country continues to deal with issues related to COVID-19.*

By Tyler Buchanan, Ohio Capital Journal

In a public health crisis, nothing is more vital for our citizenry than honest and accurate information.

Most Americans are getting that information during this COVID-19 pandemic — from health experts, media outlets and government officials.

This is what makes reports of Chinese government censorship during this crisis even more jarring. The New York Times and other outlets have reported efforts from the government to cover-up a "fumbled response" to the novel coronavirus outbreak, and control what the public learns going forward.

Things are different in the United States, which is governed by a different set of principles. Our First Amendment guarantees freedom of the press. Under Ohio's "Sunshine Laws," government meetings must be held in public venues, and records must be kept and made available to all people.

Each year, journalists recognize "Sunshine Week" as a way to celebrate these freedoms and inform the public of their rights as citizens. Meetings and records are not just meant for us reporters — they are accessible to everyone.

The usual attention given to Sunshine Week has been, understandably, overshadowed by the ongoing health crisis. Still, our leaders' actions during this crisis showcase the need for open government now more than ever.

Ohioans have witnessed plenty of examples of the value in having an open government. We have also seen examples in other states and at the federal government where that value is not so closely held.

Gov. Mike DeWine and Ohio Department of Health Director Amy Acton have led daily press conferences for several weeks. At these events, they have been transparent about the latest COVID-19 statistics. DeWine has announced a wide array of state directives, always providing details of his reasoning and acknowledging the ramifications they will have on Ohioans.

Most notably, the state officials have always opened the floor to questions from reporters. These lengthy Q&A sessions even allow some journalists to ask questions posed directly by their own readers and viewers.

DeWine and others have also kept citizens informed via social media and the state website.

Sure, things haven't always gone perfectly. One example: when Ohio still believed the primary election would take place, there was a growing list of polling places set to relocate due to the virus. The Ohio Secretary of State's Office tried to keep a list for voters, but it was updated only sporadically. Even the final list presented (before the election was postponed) did not include every location that was actually set to move.

And, speaking of election mayhem: the radio silence, poor communication and mistaken assumptions by leaders throughout Monday caused a whole day of confusion.

In fairness to those involved, this is a difficult, unprecedented time. The situation is developing very rapidly and there are bound to be some issues. By and large, though, Ohio has been far better than other examples.

Compare DeWine and Acton's responses to that of Gov. Jim Justice in neighboring West Virginia. On Monday afternoon, with community spread already confirmed in Ohio and the number of positive cases rising precipitously, Justice remained comically behind.

"If you want to go to Bob Evans and eat, go to Bob Evans and eat," Justice said, even after federal experts were urging Americans to avoid public gatherings of more than 10 people.

Justice had to eat his own words, backtracking and eventually shutting down all restaurants in the state by the following evening.

Mixed messages like that are not helpful.

Or, consider the tone-deaf governor of Oklahoma, who tweeted a picture of his family out to eat at a crowded restaurant. "It's packed tonight!," his now-deleted post read. Republican Sen. John Cornyn of Texas posted a joking photo of him drinking a Corona beer. Republican Congressman Matt Gaetz of Florida showed up to the House floor wearing a gas mask, in an apparent effort to mock the seriousness of the virus. Irony struck when Gaetz had to self-quarantine after having come in contact with someone that had tested positive.

Americans take their cues from authority. This is a time to be serious. Acton has said the evidence of community spread points to more than 100,000 Ohioans likely already having the virus.

Ohio's leaders have been more proactive, more transparent, and have taken COVID-19 more seriously than almost anyone else with authority in America.

That is good government, and that is the heart of Sunshine Week.

Tyler Buchanan *is an award-winning journalist who has covered Ohio politics and government for the past decade. A Bellevue native and graduate of Bowling Green State University, he most recently worked as a reporter and editor of The Athens Messenger and Vinton-Jackson Courier newspapers. He is a member of the BG News Alumni Society Board and was a 2019 fellow in the Kiplinger Program in Public Affairs Journalism.*

Open Government Commentary

Ohio officials wrong to withhold information on coronavirus deaths at nursing homes

By Beryl Love, Cincinnati Enquirer

In late July, Licking County officials in Ohio went public with some heartbreaking news — a coronavirus outbreak had claimed the lives of 11 residents at a nursing home in Newark.

As the surge continued, eight others died of COVID-19 at Newark Care and Rehabilitation. County health officials provided regular updates, rightly deeming the matter a public health issue.

Hamilton County leaders should take note.

At some point between the beginning of the pandemic and mid-June (we're not exactly sure when), a similar outbreak occurred at a nursing home in Westwood. An inspection report dated June 18 obtained by Enquirer investigative reporter Deon Hampton revealed 16 residents had died of COVID-19 at Mercy Franciscan at West Park in a coronavirus surge that infected 75 residents. More than two dozen staffers also tested positive for the virus.

It's troubling that city and county health officials didn't come forward to let the public know about the surge, especially when you consider more than half of Ohio's 3,700 coronavirus deaths – 2,128 as of Aug. 12, according to the Ohio Department of Health – have occurred at nursing homes and other long-term care facilities since the state began tracking the data on April 15.

Did administrators notify every family with loved ones at Mercy Franciscan? What about people in the community who might have been in contact with nurses and other staff members who work at the facility? Did they have a right to know about the outbreak?

Clearly, the answer is yes. It's a matter of public health and safety.

So far, Bon Secours Mercy Health, the Cincinnati-based health care system that operates the nursing home, hasn't provided details, other than confirming the deaths in a written statement provided to The Enquirer. County health officials have been quiet, as well.

Had it not been for The Enquirer's independent review of nursing home inspections — which revealed personnel at a dozen Cincinnati-area facilities were observed not wearing masks and other protective equipment — it's likely the Mercy Franciscan outbreak would still be a secret.

And that's a problem you can trace all the way up to the Ohio Department of Health.

Ohio Gov. Mike DeWine at a recent coronavirus briefing in Columbus. DeWine said he would review his administration's decision not to make public a list of nursing homes and long-term care facilities that have had residents die of COVID-19.

The state tracks coronavirus cases and deaths that occur at nursing homes. Right now, you can access Ohio's "COVID-19 Dashboard" online and search — by facility name — how many residents have tested positive at every long-term care facility in the state.

However, if you want to know how many residents have died, you're out of luck. The state contends that releasing the number of deaths at each facility would violate Ohio privacy laws.

We're challenging that misinterpretation of the law in court, and it won't be the first time.

The issue came up in 2005, when The Enquirer went to court to obtain a list of residential properties where children tested positive for elevated levels of lead. The Ohio Supreme Court ruled that disclosing information on the property would not identify the child. The same logic holds true for nursing homes and residents.

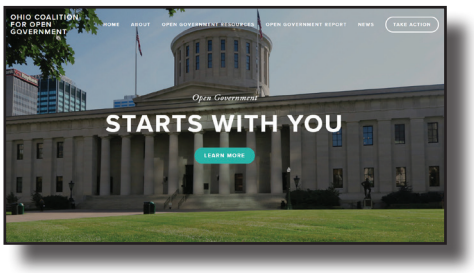
Privacy laws exist to protect individuals, not state-licensed businesses. If the state is collecting data on the number of deaths at long-term care facilities, by definition that information belongs to the public.)

Licking County clearly understands that, as does Kentucky, Indiana and other neighboring states.

It's time leaders in Ohio stop overextending privacy laws and give us a complete picture of the impact of COVID-19 on the most vulnerable of our fellow citizens.

***Beryl Love** is executive editor and vice president of news at The Enquirer.*

Support OCOG by becoming a member today



The need for the Ohio Coalition of Open Government (OCOG) has never been greater. The need for your support of OCOG has also never been more urgent. Don't take a chance that open government issues in Ohio could be curtailed or harmed. Join OCOG today!

To join OCOG, see the membership information on the back cover of this issue of the Open Government Report. You can also go to www.ohioopengov.com for more information and to apply. And don't forget that OCOG's website is continually updated with news and information about Ohio open government issues.

Open Government Commentary and Editorials

Transparency is key to lower drug prices

Editorial from the Columbus Dispatch

To tame ever-rising prices for prescription drugs in Ohio, most observers have a similar idea on how to do it, and it's right in the name of a new task force that began meeting recently: The Prescription Drug Transparency and Affordability Advisory Council.

We agree that greater price transparency for drugs is essential to a saner health care system, but we hope the new panel also will consider a broader fix: getting rid of pharmacy benefit managers. The private companies serving as middlemen between drug companies and the private companies who handle the state's Medicaid program have profited immensely by draining hundreds of millions of dollars from the taxpayer-funded system.

The value they have provided hardly seems worth the cost.

Ohio has been working to rein in abusive practices by PBMs since mid-2018, after reporting by The Dispatch revealed that CVS Caremark and Optum Rx, two of the PBMs serving Ohio Medicaid, netted $224 million in a 12-month period by charging Medicaid one price for drugs and reimbursing pharmacies with amounts generally far lower.

Then-Gov. John Kasich's administration responded by ordering greater transparency in the next round of contracts between PBMs and the managed-care companies handling Medicaid. And the General Assembly eventually barred "spread pricing," requiring PBMs instead to be paid only a set fee per prescription filled.

But that didn't end the flow of excess profits to PBMs, either. They still had wide latitude to set the terms of prescription coverage, and because most have parent companies that also own pharmacy chains, a new gambit emerged: arbitrarily designate certain drugs as "specialty" medications, jack up the price substantially and decree that they can be filled only at the parent-company pharmacy.

That trick, too, should be history now, thanks to Jan. 1 Medicaid rule changes under which PBMs must allow prescriptions to be filled at any pharmacy that can do so and the state, not PBMs, will decide which drugs are "specialty."

One alternative to PBMs the drug-price panel should examine is the course taken by West Virginia. That state, like Ohio, uses private managed care organizations to act as insurance companies for Medicaid recipients. But in 2017, it "carved out" the prescription drug benefit from the MCOs' responsibilities.

Instead of allowing a for-profit PBM to create a thicket of dense, nontransparent rules and prices, West Virginia began serving at its own PBM. It turned to the University of West Virginia School of Pharmacy to develop the formulary, or list of drugs to be covered under what circumstances.

Under its Medicaid and state employee insurance plans, West Virginia pays pharmacists directly according to a standard dispensing fee. The state says it expected savings of $30 million for 2018 but actually saved more than $54 million on drugs. At the same time, it says, reimbursements to pharmacies went up by $122 million over the previous model.

Other West Virginia Medicaid services continue to be handled through the managed care model. For determining what kinds of care a patient should have, managed care has proven effective at saving money and making patients healthier, because it focuses on healthy

(continued, see **Transparency** *page 7)*

Forecast for a sunnier Ohio

Editorial from the Toledo Blade

Ohio could use more sunshine and State Auditor Keith Faber has a plan to make the state sunnier — at least as far as open and transparent government is concerned.

Mr. Faber has announced a new star-rating system with which to grade the 6,000 or so public entities in Ohio that are required to comply with Sunshine Laws, which are intended to ensure public bodies conduct public business in a transparent fashion.

Those laws are created to ensure the public has access to public meetings and public records from governmental agencies including the governor's office as well as the local school districts, cities, and villages.

In recent months The Blade has needed to pressure Washington Local School Board about its plans to conduct public business behind closed doors in improper executive sessions. The Blade also won a 2013 court case to force the city of Toledo to release its law enforcement gang map.

The auditor's office already considers whether public entities are following the Sunshine Laws as part of periodic evaluations.

Under the new system, Mr. Faber's office will test public offices and issue annual reports to determine each governmental office's star rating.

For his part, Mr. Faber says he is aiming to reward high achievers rather than shame offices that do poorly.

This is a solid approach, but Mr. Faber should consider public input from everyday citizens seeking access to public records and public meetings as part of his evaluation.

As a state senator Mr. Faber sponsored a law in 2016 that created a mediation path through the Ohio Court of Claims to resolve public records disputes for a fee of $25 as a quicker and cheaper alternative than litigation. This new system for the auditor's office builds on that.

Mr. Faber's system would award a sliding-scale of stars based on compliance with Ohio's Sunshine Laws, starting with no stars for noncompliance statutes regarding making public records available upon request and governing in the open and progressing to four stars for implementing five or more identified "best practices."

Any entity earning at least two stars could print out certificates for display. Ratings will be rolled out gradually as audits are completed.

The governmental offices that earn high ratings use best practices such as implementing a system tracking public records requests, making applications available online for the public to make requests, and routinely making meeting minutes, agendas, budgets, salaries, and other public information available online.

Democracy depends on transparent and accountable government.

Encouraging Ohio's public officials to do their best to make sure the public has access to public meetings and public records is an excellent plan.

Open Government Commentary and Editorials

Speakergate makes it plain: Ohio must curb dark money

Editorial from The Columbus Dispatch

Now can we talk about dark money, Ohio? The unlimited, unaccountable floods of cash that have been warping American democracy for the past decade have been the subject of furrowed brows and rueful head-shaking for years, but lawmakers haven't moved to fix the problem and voters haven't demanded it.

In light of the corruption described in the U.S. Justice Department affidavit against Republican House Speaker Larry Householder and four associates, that has to change. Any Ohio lawmaker who argues against reining in secret spending does not deserve to be reelected.

U.S. District Attorney David M. DeVillers said it, and any political observer knows it: The illegal racket Householder is accused of commanding could not have existed without massive contributions from unidentified donors — dark money.

It became a malevolent and overwhelming force in U.S. elections after the 2010 Citizens United decision by the U.S. Supreme Court, which held that limits on contributions to political action committees by corporations and unions are unconstitutional. That decision, harmful as it was, didn't create the secrecy. Political organizations still are required to disclose their donors.

But it took unethical operators no time to find a loophole through which the newly unlimited flood of money could flow secretly: Some interest groups, nominally nonpolitical, don't have to disclose who gives them money. Those groups, typically with innocuous names like "Citizens for Goodness" or "Ohioans Against Evil," can collect millions to, in turn, donate to a political committee.

The political committee duly reports its contributions from CFG or OAE, but no one knows where the money really came from.

The practice is deeply cynical. The tax-free interest groups, organized under section 501(c)4 of the U.S. tax code, are supposed to have the purpose of promoting social welfare. Unlike the more-familiar 501(c)3 groups, which are prohibited from any political activity, 501(c)4s are permitted to advocate and lobby for political causes, but political activity cannot be their main focus.

In practice, since the Citizens United decision opened the floodgates of

corporate cash, 501(c)4s routinely have been used to spend unlimited money without owning up to it.

Ohio first saw it on a large scale in the 2017 battle over Issue 2, a proposed state constitutional amendment that would have imposed artificial price controls on drug purchases by the state. Opponents of the issue spent a record $58 million to defeat it and did so handily. Backers spent $14.2 million.

Everyone paying attention knew that drug companies, organized by PhRMA, the Pharmaceutical Research and Manufacturers of America, were behind the campaign to defeat Issue 2. But individual companies wouldn't want consumers to know how much they spent to keep drug prices high.

The solution was to form a 501(c)4 group called Ohioans Against the Deceptive Ballot Issue, which presumably took undisclosed contributions from drug companies.

And that's the part that's perfectly legal.

Householder is accused of taking dark money beyond its legal limit, by controlling the "social welfare" organization himself — something even current, inadequate campaign-finance law doesn't allow. Such groups are prohibited from coordinating their operations with any political candidate.

The affidavit supporting the charges alleges that Householder, along with longtime lobbyist Neil Clark, former Ohio GOP Chairman Matthew Borges, political aide Jeffrey Longstreth and FirstEnergy lobbyist Juan Cespedes, created a 501(c)4 called Generation Now so that FirstEnergy could pump money into several efforts. First was donating to the campaigns of House candidates who would back Householder for speaker; then, ensuring passage of House Bill 6, a $1.3 billion bailout for a FirstEnergy subsidiary; then, beating back an effort to overturn HB 6 at the ballot.

Householder also, according to the affidavit, found money — about $500,000 — to pay some debts and back taxes and fix up a second home in Florida.

Long before the FBI revealed the stunning allegations against Team Householder, advocates for campaign-finance reform pointed to the overwhelming, heavy-handed politicking around HB 6 as a reason for curbing dark money.

The League of Women Voters and Common Cause made the important point last year that the ads and campaign tactics would not have been so deceptive and nasty if voters could have known who had paid for them. The legislature did nothing, just as when former Rep. Kathleen Clyde, a Democrat from Kent and at the time a candidate for secretary of state, introduced a bill in 2018 requiring disclosure of contributions to pass-through groups like 501(c)4s.

Likewise, a disclosure bill sponsored by then-Sen. Jon Husted in 2010 passed the Senate but died in the House.

Now, Republican Rep. Gayle Manning of North Ridgeville and Democrat Jessica Miranda of Forest Park, near Cincinnati, have united to introduce House Bill 737, another attempt to require disclosure of corporate spending funneled through groups that don't have to disclose donors. Ohio Secretary of State Frank LaRose has endorsed it.

While the new bill likely doesn't address all of the problems with transparency under Ohio law, we urge lawmakers to debate it, improve it if necessary and pass it.

It is painfully obvious that dark money encourages deceptive and unethical campaigning at best and outright corruption at worst. Ohio is made worse by it. It's time to turn on the light.

Transparency

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outcomes rather than simply paying more to the providers who perform more medical services.

But once a drug has been prescribed, providing and paying for it should be relatively simple.

We urge the new panel to keep simplicity and transparency foremost in mind.

How to file a public records complaint through the Ohio Court of Claims

Ohio's public records mediation process, which went into effect in 2016, continues to be a success. A large number of open government cases have been favorably settled in the last few years, with the mediation process offering Ohio citizens a low-cost and timely process to seek the release of public records when government entities deny their initial request.

To use the public records mediation process, follow the chart below.

To receive this illustration as a free 8.5 x 11 size print copy or PDF, email OCOG's Jason Sanford at jsanford@ohionews.org.

START HERE

Go to www.ohiocourtofclaims.gov/public-records.php

Ohio Coalition for Open Government

Working to strengthen and support open government and public access

Attacks on journalists keep us all from being informed

By Monica Nieporte, OCOG President

To all of the journalists who are covering protests — be careful out there.

Never before did I worry that harm would come to one of our journalists at the hands of police but I can't say that anymore.

The constant casting of journalists as "enemies of the people" has resulted in journalists being treated as such this past week by both some members of the angry mob and law enforcement.

Reports of journalists being arrested, intentionally sprayed with pepper spray or tear gas, hit with a police baton, shield or fists makes me sick to my stomach.

These incidents are not as isolated as you'd think. They are happening all over the country, including right here in Columbus.

Journalists who are out covering protests are exercising their First Amendment right of freedom of the press covering citizens exercising their First Amendment rights of freedom to assemble and free speech. Yes, there are some vandals and other ill-intentioned persons in the crowd and journalists are covering their despicable actions too – but they are not part of them. Not only is being in the middle of social unrest a danger in and of itself, but being in the middle of it during a pandemic carries additional risk. These journalists should be lauded and treated as the first responders. They're risking life and limb to keep their communities informed. What if the public had to rely on government press releases about what happened during these protests? An independent third party is crucial in times like these.

Unfortunately law enforcement is not pausing to discern who is out causing problems and who is not a threat. If you're out past curfew, you are treated as a threat.

I'd like to think if law enforcement or the military went up to a bunch of paramedics and just started beating them and hitting them with knee-knockers that there would be a big public outcry. There is no public outcry when journalists get abused this way because the public has been conditioned to think "well, the news crew must have deserved it". Where's the outrage over a priest being hit with pepper spray so our president could stage a campaign photo without protestors in the background? A priest. Not some hopped up vandal with a brick in his hand smashing windows. A priest. On church property. If the president didn't know that's what his attorney general had ordered, then where is his outrage? His apology to the church?

Growing up in Northeast Ohio, I always wondered how the tragedy on May 4, 1970 happened at Kent State. Try as I might, I could never quite wrap my head around how in the world something that like could have happened. How could young soldiers fire live ammunition into a crowd of college students? After seeing what I've seen this past week, I have to say that my head is now around it. I get it. It's scary. And it is exactly the kind of thing that can happen when no one in a leadership position steps in to diffuse tensions and everyone is on edge.

When I worked as a reporter, I always knew local law enforcement had my back if a situation turned dangerous. I had a lot of friends wearing black and blue who would cast protective glances over our way to make sure no one was harassing or abusing us and they would not have hesitated to pull one of us to safety. It would never have occurred to them that it was okay to fire rubber bullets at us or spray us in the face with mace. There was mutual respect — they didn't interfere with us and we didn't interfere with them but if it came right down to it, we could count on them for protection if we had to. I never once felt unsafe. I find it sad that so many journalists today are having a far different experience.

Info on First Amendment right to cover protests

On May 31, the Ohio News Media Association and the Ohio Association of Broadcasters worked with their respective members in Cleveland to resolve a situation that occurred when the Cleveland Police Department informed journalists they were not exempt from the mayor's curfew and could not be on the streets.

The mayor later clarified during a press briefing that the curfew did not apply to properly credentialed journalists.

There have been a number of attempts around the country in recent months to restrict the media's ability to cover the protests. In addition, members of the media around the country have also occasionally been targeted by the police.

As a reminder to the general public and government officials, here are a few points about what journalists can do while covering protests.

DO JOURNALISTS HAVE A FIRST AMENDMENT RIGHT TO COVER A PROTEST?

Yes, with a few limitations. Freedom of the press protects the right to collect and disseminate news, but the right is not absolute. Members of the media are subject to the same general laws as other citizens and do not have a special right of access to sources of information. However, police may not arrest a reporter or deny access simply to retaliate for negative news coverage or to prevent reporting on a public demonstration.

DO JOURNALISTS HAVE A FIRST AMENDMENT RIGHT TO RECORD THE POLICE?

Most courts recognize a First Amendment right to record the public activities of law enforcement, but the issue is not settled in all jurisdictions.To reduce legal risks, journalists should clearly identify themselves as members of the press, record from safe distances, and remain open and transparent about recording.

CAN POLICE SEARCH AND SEIZE A JOURNALIST AND THEIR EQUIPMENT?

Police can briefly detain journalists if they have reasonable suspicion to believe they are engaged in criminal activity, and they can "frisk" or pat them down if they have an objective, reasonable belief that you are armed and dangerous. If police have probable cause to believe they are committing a crime, they can arrest them.

However, police cannot search the contents of a journalist's cellphone without a warrant, although they can still seize it during an arrest, examine it for physical threats, and secure it while a warrant is pending. Other recording devices, such as cameras, may have similar protections, depending on the jurisdiction.

(Adapted from information originally created by the Michigan Press Association.)

OHIO ROUNDUP

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Does Oregon District shooter deserve privacy after death? Ohio Supreme Court to decide

From The Dayton Daily News

The Ohio Supreme Court on June 3 heard arguments in a lawsuit brought by the Dayton Daily News and other media seeking release of education records on the Oregon District shooter, Connor Betts. Betts, 24, killed nine people and wounded dozens before he was shot dead by Dayton police in the Oregon District.

Betts' former classmates told the Dayton Daily News he had created a hit list and a rape list with other students' names, had other incidents of violence and threats as a teenager and was suspended from Bellbrook High School for an extended period of time.

The Dayton Daily News and other media outlets filed public records requests with Bellbrook-Sugarcreek Schools seeking Betts' discipline, attendance and other education records to inform the public and whether more could have been done to prevent the mass shooting.

Bellbrook-Sugarcreek Schools refused to release the records arguing that would violate state and federal student privacy laws. The Second District Court of Appeals agreed with the school district.

But attorneys for the media appealed to the Ohio Supreme Court arguing that those privacy laws don't apply to adult former students who are deceased. Ohio Attorney General Dave Yost joined the suit in support of the media in December.

Erin Rhinehart, attorney for news media, argued that the high court should interpret the intent of the Legislature and consider the context that the Ohio Student Privacy Law was written. She noted that the state law was crafted when common law refused to extend privacy after death and it was written to bring Ohio into compliance with federal law. Consistently, the U.S. Department of Education guidance has said the federal privacy law doesn't apply to deceased adult students, she said.

Attorney Ben Flowers of Yost's office said "This is the very sort of case for which the Public Records Act exists. It is so that individuals can obtain important information from their government that they can use to insist on legislation and potentially hold local and government officials accountable."

A decision from the Ohio Supreme Court is expected in the coming months.

Ohio Supreme Court hears arguments in appeal over judge shot video

From the AP

An attorney for The Associated Press argued before the Ohio Supreme Court on July 21 that a county prosecutor did not provide "competent" evidence to prove that courthouse security camera footage of a judge being shot is a security record and should not be released to the public.

The attorney, Jack Greiner, argued that Jefferson County Prosecutor Jane Hanlin's three affidavits submitted to a special master at the Ohio Court of Claims amounted to nothing more than "hearsay," as an appeals court referred to them, and does not prove her case.

"The special master wanted evidence and rationale to claim it was a security record," Greiner argued.

The video shows Jefferson County Judge Joseph Bruzzese Jr. being shot outside a Steubenville courthouse in eastern Ohio in August 2017 by 51-year-old Nathaniel Richmond, and then Richmond being killed by a probation officer.

Richmond had a pending wrongful death lawsuit in front of Bruzzese at the time. The judge recovered and returned to the bench.

The day of the shooting, the AP asked for a copy of the surveillance video recorded by a camera positioned in front of the courthouse, but Hanlin denied that request, saying the video was a confidential law enforcement record and part of the courthouse's infrastructure security system, among other arguments.

Hanlin throughout the case has maintained that releasing the footage would jeopardize the lives of judges and court personnel.

The Ohio Court of Claims in February 2019 sided with an appeal brought by the AP, saying the video doesn't contain any information that could be used to protect a public office from "attack, interference or sabotage."

Hanlin appealed to the 7th District Court of Appeals in Youngstown, which ruled in Jefferson County's favor, saying the video is exempt under Ohio's public record law because it would reveal courthouse security measures.

The appeals court said, in part, that the Court of Claims should have considered affidavits submitted by Hanlin, based on her personal knowledge of the situation, that the video met the security exemption under state law.

The appeals court acknowledged that the affidavits, which did not include any testimony from security experts, were based on hearsay. But the documents could be used to argue against releasing the video because the AP waived its right to object to the affidavits, the appeals court said.

The AP appealed to the state Supreme Court, arguing that the appeals court ruling, if it stands, would make it easier for public agencies to deny requests in the future by providing such affidavits.

In its arguments to the Supreme Court, the AP's attorney says Ohio case law is clear that the video is a public record, as the Ohio Court of Claims previously ruled, and should be released.

Lawyers for accused murderer withdraw attempt to close trial to media and prevent photographing of defendent

On August 3 lawyers for murder defendent Travis Soto filed a motion to exclude The Lima News and other media outlets from pretrials hearing in Putnam County and to keep them from photographing the defendant. In response AIM Media filed a motion with Judge Keith Schierloh saying The Lima News has a constitutional right of access to pretrial proceedings.

The Ohio Coalition for Open Government supported this motion and in late August filed a "me too" brief urging the court to deny the defendant's motion to prohibit the filming, photographing, or videotaping of the defendant while in the courtroom. OCOG also asked the judge to deny the defendant's motion for closure of the pretrial hearings.

As OCOG wrote in the brief, the defendant's motion to prohibit filming, photographing, or videotaping lacks a legal basis under Ohio law and is contrary to multiple Supreme Court rulings.

On September 14 lawyers for Soto withdrew the motion, admitting in their filing that "they would be unable to rise to the expected standard for both motions."

Ohio's public-records, open-meetings laws due for update, attorney general says

From the Columbus Dispatch

Dave Yost wants to present new recommendations to the legislature to revise public-records and open-meetings laws to correct weaknesses, ensure prompt access and recognize technology.

When Ohio lawmakers decided in 1963 that government at all levels serves as the custodian of the people's records — rather than the owner — there was a lone exemption in the public records law.

The minting of the law enshrining Ohioans' right to know specified that only personal medical records could not be released, bestowing it with the designation of exception (a).

Fast-forward 57 years, and the exemptions enacted to block public access to some records and declare them confidential now spill over into a second run of the alphabet, reaching (mm).

And scattered throughout sections of state law outside the public records act, an additional 330 classes of records also are declared off limits to Ohioans.

Ohio Attorney General Dave Yost says the time has come to modernize the state's Sunshine laws, which include the public's right to attend meetings of governmental bodies.

"It hasn't been revisited in many years. It's no longer 1963, when it passed; it's 2020," he said.

Yost, who first championed transparency as a reporter for the Columbus Citizen-Journal in the early 1980s, is empaneling a group of lawyers, journalists, government officials and privacy experts to brainstorm. He wants the group to deliver recommendations to legislators to revise public-records and open-meetings laws to correct weaknesses, ensure prompt access and recognize technology.

The attorney general wants more records produced faster, particularly on simple requests for limited records. The law now sets no deadlines for government to respond to citizen requests for records, and requests routinely take months to fill.

"Often, there are times when there is a six-page document, and it's been produced in the past year. They know exactly where it is, and they're not going to give it to you," Yost said.

"Something recent, reasonably brief, less than 10 pages, a reasonable time for compliance should be 24 hours."

Complaint filed against Shelby County Board of Elections

From The Sidney Daily News

A complaint was filed June 25 with the Ohio Court of Claims Public Records Division against the Shelby County Board of Elections for allegedly holding a meeting without notifying the public and news media.

According to the complaint, which was filed by R. Michael Johnson, of Sidney, the board allegedly met Wednesday, June 24, in regards to filling the deputy director's job. He alleges the board met with a majority of a quorum present, which violates Ohio Revised Code 122.21, which requires the board to notify the public of the meeting. It also allegedly violated the Ohio Sunshine Law, which requires media to be notified 24 hours prior to a meeting.

Johnson's complaint further states that a meeting must be called to order prior to the board entering an executive session to interview candidates. The board must then come out of executive session to adjourn the meeting. No action can be taken during an executive session.

The complaint calls for the board and its chairman, James Kerg, to be investigated for the incident.

Johnson said he became aware of the meeting when one of the applicants mentioned she was called with an interview time less than 24 hours before the board wanted to talk to her and expected her to walk off her job to be interviewed.

OHIO ROUNDUP

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Cleveland Jewish News Sues Beachwood for public records in Mayor Horwitz sexual harassment settlement

From Cleveland Scene

The Cleveland Jewish News filed suit against the City of Beachwood in the Ohio Supreme Court on July 22, arguing that the East Side suburb refused to comply with public records requests related to an employee's settlement agreement in the wake of a sexual harassment allegation against Mayor Martin Horwitz.

The suit paints a picture of Beachwood officials stiff-arming journalists in an effort to protect Horwitz from scrutiny into a potentially embarrassing episode. The Mayor was already the subject of an investigation into inappropriate workplace conduct last fall. He escaped more or less unscathed, retaining the his position with council and resident support.

The 15-page legal complaint describes repeated refusals by Beachwood Law Director Diane Calta to provide records to CJN reporters and editors.

Among the requested records: an unredacted copy of a demand letter by the employee, Whitney Crook; a copy of the settlement agreement between Beachwood and Crook; text messages between the Mayor and city council members about the agreement and about CJN's ongoing reporting; insurance claims pertaining to the settlement; and related documents.

Calta denied requests on grounds that the material requested was confidential or that the requests themselves were vague or overly broad.

CJN's reporting began in earnest in February, according to the complaint, after Publisher Kevin Adelstein heard that the Beachwood employee had made sexual harassment allegations against Horwitz and was seeking financial compensation from the city. Adelstein put Managing Editor Bob Jacob on the case, and Jacob submitted the first public records request on Feb. 13, seeking the demand letter from Whitney Crook.

Per the complaint, Jacob soon learned that "certain Beachwood officials were trying to quash CJN's reporting," particularly the sexual impropriety allegations against Horwitz.

It's unclear how officials attempted to quash CJN's reporting, beyond the law director's serial non-compliance with records requests. As the complaint makes clear, Calta denied several requests because they were supposedly too vague, but was nevertheless able to articulate precisely what CJN sought in follow-up emails. In multiple instances, Bob Jacob narrowed a request or offered additional details on what he was after, based on Calta's opinion that initial requests were overly broad. The requests were still denied.

At long last, all Ohio legislative committee meetings are being publicly broadcast

From The Plain Dealer

For the first time ever, all Ohio General Assembly committee hearings are being broadcast and/or streamed online to the public.

It's a landmark moment in Ohio Statehouse history – one that's come after years of effort by good-government groups and some lawmakers to give a window into the committee process, which can be byzantine but is also where many key decisions on major issues affecting every Ohioan get made.

Coverage of each of the Ohio Senate's 14 standing committees began on Jan. 16, starting with a Senate Higher Education Committee hearing at 11 a.m. All Senate committee hearings will be televised on public broadcasting stations around the state and streamed live on OhioChannel.org.

"We believe in increasing access to your elected officials and providing transparency to state government proceedings, and live coverage of our committees is another way for us to bring the Statehouse to the people," said Senate President Larry Obhof, a Medina Republican, in a statement.

"President Obhof and I want people to engage in their state government and be a part of the process," said Senate Minority Leader Kenny Yuko, a Richmond Heights Democrat, in the statement.

The Ohio House previously began live coverage in all of its 10 committee rooms last Septemberr. At that time, Ohio was one of only 12 states to offer live and on-demand video of its House committee meetings.

While the House had to install cameras in most of its committee rooms, the Ohio Senate's three hearings rooms have had cameras in them for years. However, until now they haven't been used for public broadcasts because the Ohio Channel didn't have enough staff to monitor them, said Ohio Senate GOP spokesman John Fortney.

The current two-year budget addresses that by providing an additional $125,000 to hire more staff.

The Ohio Channel has offered live coverage of legislative committee hearings since 1996. But until recently, only a fraction of the committee hearing rooms – usually the ones used by the most high-profile committees – had cameras installed.

Milford Schools settles lawsuit over executive session meeting violations

From The Clermont Sun

The Milford Exempted Village School District Board of Education approved a signed settlement agreement with

Rachel Richardson over an April 2019 lawsuit.

As part of that agreement, the Board of Education acknowledged that "some of their past motions to enter executive session have violated" the Ohio Revised Code by not "adequately notifying the public of the personnel matters which they planned to discuss in those executive sessions."

Going forward, if board members decide to go into executive session for the purpose of considering one or more matters listed in R.C. 121.22, they "hereby agree to specify in it a motion and vote listed matters that it will discuss in the executive session."

The District also acknowledges that committee minutes have not been readily available for public inspections, and as such, in the future, the board agrees to prepare, file, and maintain full and accurate minutes for committee meetings, and make them available to the public.

However, the District denies engaging in "round-robin discussions, holding private quorums, or conducting business in private," as was alleged by Richardson in the complaint.

Judge rules Bellbrook school board violated public meeting law repeatedly

From The Dayton Daily News

The Bellbrook-Sugarcreek school board violated Ohio's Open Meetings Act on multiple occasions in 2018 and 2019, according to a ruling on August 26 from Greene County Common Pleas Court judge Stephen Wolaver.

Sugarcreek Twp. resident John Stafford had sued the school board, arguing that they conducted closed executive session meetings improperly and held illegal "meetings" via exchange of private emails and text messages.

"This is a big win for the public and for government transparency, and it sends a strong message that our elected officials will be punished if they don't follow the law," said Stafford, who has fought the district over school levies the past two years.

Bellbrook Superintendent Doug Cozad and school board President David Carpenter said the district accepted the ruling.

"We respect the law and the decision made by our courts," Cozad said. "The court has interpreted these as technical violations but there was no inappropriate intent associated with these actions. We have taken measures to prevent any further technical violations."

Wolaver ruled that board members' text and email discussions from April 19-22, 2019, regarding a May 2019 pro-school levy postcard, "contain sufficient discussion and deliberation to constitute a meeting under the (Open Meetings Act)."

The ruling says then-board member Kathy Kingston solicited input from other board members, and Cozad emailed the other four board members, asking them to send Kingston their thoughts on a draft letter to the community.

The ruling says board members Carpenter, Mary Frantz, and then-board member Elizabeth Betz responded, and after some back-and-forth over the content, the result was a $2,008 expenditure to mail 6,500 postcards to district residents.

Sandusky Register and the Ohio Center for Investigative Journalism file FOI request with Border Patrol

From The Sandusky Register

The Register and the Ohio Center for Investigative Journalism have filed a Freedom of Information Act request to learn more about the operations of the Sandusky Bay Station of U.S. Customs and Border Protection.

The building at 709 SE Catawba Road housed close to 100 federal agents when it opened in June 2012. It's responsible for law enforcement in Ohio from Toledo to Cleveland.

In June 2018, Border Patrol agents arrested 114 people working at two Corso's Garden Center establishments in Erie County.

For years, the Border Patrol has refused to disclose any information about its operations, its mission, the people it arrests or takes into custody, or anything normally required by law enforcement agencies operating in the state of Ohio.

Lucia Walinchus, the executive director of the Ohio Center for Investigative Journalism, also known as Eye on Ohio, said she hopes the public records request will shed light on the local operations of an important federal agency.

"The Register brought to our attention that they had previously asked for information from Customs and Border Protection but had not been able to get even basic information about the local station. And we know immigration is an important and difficult subject to cover, even with great resources," she said.

"Taxpayers spend billions of dollars on government programs, and they have a right to know how those dollars are spent under the Freedom of Information Act," Walinchus said. "Yet a large, well-outfitted government agency patrols Northern Ohio, and right now they essentially operate in secret. We are committed to reporting on this discrepancy."

The public records request, submitted June 9, asks the Port Clinton station to release documents on incident reports and arrests in 2019, its last fiscal year budget, records on any suspects arrested in 2019 and many other details of its work.

U.S. Customs and Border Protection acknowledged getting the request but told Walinchus, "We may encounter some delay in processing your request."

The only time the agency previously released records to the Register it took more than two years from the time the documents were requested until receipt, but most or all the information on the documents provided was redacted.

OHIO ROUNDUP

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Body camera video shows Cleveland police officer pepper sprayed peaceful protester in the face

From Cleveland.com

Newly released body camera video shows a Cleveland police officer fire pepper spray in a peaceful protester's face during the May 30 demonstration outside downtown's Justice Center that devolved into riots.

The video, captured by a Cuyahoga County sheriff's deputy, was included in a batch of body camera videos that the county released in early August, nearly two months after cleveland.com and other media outlets requested the videos. It depicts a previously un-publicized use of force by Cleveland's police department, which is already facing two excessive force lawsuits over actions its officers took that day in response to the demonstration.

Department spokeswoman Sgt. Jennifer Ciaccia responded by saying that the incident was "under investigation." Pressed further, Ciaccia said that she sent the video to the department's internal affairs unit after cleveland.com reached out with a request for comment.

Online database offers listing of public government meetings in Summit, Cuyahoga counties

From Crains Cleveland Business

City Bureau, a Chicago-based nonprofit civic journalism lab, is working to increase government transparency on the local level through a free website, Documenters.org, that now has expanded its work to include Northeast Ohio. The online database provides information — times, dates, locations, links to websites, agendas when available — about public-entity meetings in Summit and Cuyahoga counties.

City Bureau calls the effort the City Scrapers project, which uses computer programs to "scrape" meeting details from webpages. The easy-to-use Documenters.org website lets users search by agency name, topic, ZIP code, date and more.

City Bureau said it has found more than 150 city- and county-level government entities in Summit and Cuyahoga counties for the database and expects that to expand. The group offers an online feedback form for folks to pass along information about government agencies that might not already appear in the listings.

Murray Energy leaves questions unanswered about role in Ohio conspiracy case

From WOSU

While an Ohio-based coal company contributed $100,000 to an organization that may have been involved in an alleged bribery operation to pass a power plant bailout law last year, company officials said in a bankruptcy filing that they don't know how the money was spent.

A bankruptcy court ruled last week that Murray Energy can move ahead to seek approval of its reorganization plan, subject to a representation that its officers and directors have no knowledge about how money it gave to a dark money organization might have been used to promote the Ohio coal and nuclear bailout law at the heart of a federal conspiracy case.

The ruling is a partial victory for environmental and citizen groups, who had objected to a more limited disclosure statement proposed by Murray Energy and its related debtors on August 6. But creditors or others can't independently verify that statement or dig into other questions about the extent to which the company may have spent funds to influence Ohio energy policy.

"If we do not have the ability to verify, we should not trust," said Catherine Turcer, executive director of Common Cause Ohio, paraphrasing a Russian proverb.

Murray Energy has been identified as "Company B" in the federal government's July 21 complaint, which alleges that $100,000 was wired from a company to "Dark Money Group 1" on Oct. 26, 2018. Murray Energy's bankruptcy filings show a $100,000 cash contribution that day to Hardworking Ohioans, Inc.

Hardworking Ohioans, which is registered as a for-profit corporation, allegedly spent $1.5 million on political ads supporting Republican candidates in 2018.

Murray Energy did not respond to a request for comments for this article.

The Environmental Law & Policy Center, Ohio Environmental Council, and Ohio Citizen Action had asked Bankruptcy Judge John Hoffman, Jr., to require disclosures about Murray Energy's possible involvement in the federal case. Murray Energy's August 6 filing stated that the case had been filed, that so far it was unaware of contacts with the authorities that had filed the complaint, and that it had previously disclosed all gifts and charitable contributions.

Criminal charges against the company generally would not be wiped out by bankruptcy, so they might impair the financial viability of the reorganized company. That information could be important to creditors, the environmental and citizen groups stressed.

Moreover, if the government should bring criminal charges, Murray Energy might be unable to complete its mine closure obligations, the groups argued. If that happened, the state fund set up as a backstop lacks sufficient money to cover the estimated costs of more than $200 million for that work.

It's unclear whether those liabilities will be discharged in bankruptcy — and thus limited to the reorganized company's assets going forward.

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Public officials cite virus while limiting access to records

From the AP

Many state and local governments across the country have suspended public records requirements amid the coronavirus pandemic, denying or delaying access to information that could shed light on key government decisions.

Public officials have said employees either don't have the time or ability to compile the requested documents or data because they are too busy responding to the outbreak or are working from home instead of at government offices.

The result is that government secrecy has increased at the same time officials are spending billions of dollars fighting the COVID-19 disease and making major decisions affecting the health and economic livelihood of millions of Americans.

That's raised concerns among open-government advocates.

"It's just essential that the press and the public be able to dig in and see records that relate to how the government has responded to the crisis," said David Snyder, executive director of the First Amendment Coalition, a California-based nonprofit. "That's the only way really to avoid waste, fraud, abuse and to ensure that governments aren't overstepping their bounds."

The nonprofit Reporters Committee for the Freedom of the Press has tracked more than 100 instances in at least 30 states and the District of Columbia in which state agencies, counties, cities or other public entities have suspended requirements to respond to open-records requests by regular deadlines or told people to expect delays.

Some governors have issued decrees allowing record requests to be put on hold for as long as the coronavirus emergency continues. Others have extended response deadlines by days, weeks or even months.

Various federal agencies also have said there may be delays in processing public records requests. The FBI temporarily stopped accepting electronic records requests in March, citing the coranvirus, but has since resumed. It's website now says record-seekers "can expect delays."

A bipartisan group of U.S. senators has raised concerns and asked the federal Office of Information Policy to outline any steps it's taking to protect the public's right to information.

First Amendment Watch releases a Citizen's Guide to Recording Police

In response to the nationwide demonstrations against police brutality, NYU's First Amendment Watch is publishing a guide informing citizens of their right to record the police in public places.

The video of George Floyd's brutal death at the hands of the Minneapolis police, as well as the hundreds of videos taken by bystanders documenting use of force by law enforcement against peaceful protestors, underscores the role that journalists and the public play in illuminating misconduct.

The First Amendment right to record public officials such as the police performing their official duties in public is central to our democracy. Without the ability to document and disseminate such information, citizens would lack an indispensable tool for keeping the public informed, and for holding their leaders accountable.

To access the guide, go to www.firstamendmentwatch.org.

NFOIC reveals pilot project results looking at state transparency bills nationwide

The National Freedom of Information Coalition has published a new report analyzing all bills introduced in 2019 sessions across the U.S. in conjunction with Quorum, a Washington D.C.-based software company.

Of the 142,057 bills introduced in all 50 states, the District of Columbia and Puerto Rico in 2019, transparency-related search terms NFOIC tracked returned 19,311 "unique" or individual bills. That translates into about 13.6 percent of all 2019 bills.

Transparency issues arise in all kinds of bills — everything from how public data is collected, organized, managed and disseminated by government, to the balance between personal privacy and the public's right to know, and how government interacts with the private sector.

Among the pilot project findings:

- Research showed the primary issue areas most prevalent with transparency-related language included Commerce, Law Enforcement, Economics and Public Finance, Education, Government Operations and Health Care.
- While state Democratic legislators sponsored more transparency-related legislation in 2019, state Republican legislators were overall more effective at enacting transparency-related legislation.
- Finding accurate bill language is both an art and a science. In this pilot, we learned broad search terms often bring in too many results and further refinement of search terms is needed. Weeding out extraneous bills is necessary, and the lack of standardization of transparency search terms from state to state creates an additional challenge.

To download the report, go to www.nfoic.org.

Ohio Coalition for Open Government

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The Ohio Coalition for Open Government (OCOG) is a tax-exempt 501 (c)(3) corporation established by the Ohio News Media Foundation in June 1992. The Coalition is operated for charitable and educational purposes by conducting and supporting activities to benefit those who seek compliance with public access laws. It is also affiliated with a national network of similar state coalitions.

The Coalition serves as a clearinghouse for media and citizen grievances that involve open meetings and open records, and offers guidance to reporters in local government situations. The activities of the Coalition include monitoring government officials for compliance, filing "amicus" briefs in lawsuits, litigation and public education.

Annual membership to OCOG entitles a group or individual the use of the FOI legal hotline, and subscription to the newsletter.

OCOG is funded by contributions from The Ohio News Media Foundation and other outside sources. Its seven-member board includes public trustees from organizations with an interest in freedom of information. For board members, please see the masthead on page 2.

OCOG needs your support!

OCOG's most public – and expensive – activity is supporting legal cases involving open government issues in Ohio. The Coalition receives multiple requests each year to provide "amicus" (friend of the court) briefs in pending cases. OCOG's experienced attorneys have helped plaintiffs achieve major wins at the Ohio Supreme Court. In recent years, cases OCOG supported resulted in the following rulings:

- Thanks to the efforts of courageous student journalists, police records kept by private college police forces utilizing sworn and commissioned officers are now subject to Ohio's open records law – meaning that these forces no longer can secretly arrest and detain people or investigate thefts, assaults and other campus incidents that should be open to scrutiny. (Schiffbauer v. Otterbein University)
- Public bodies cannot use email to discuss and deliberate in an effort to exclude other board members and end-run requirements of Ohio's open meetings law. OCOG supported a school board member who didn't like what he saw. (White v. Olentangy School District)
- Police can no longer indefinitely withhold entire files of closed cases just because someone could file a future action, thus providing access to those who may be able to prove they were wrongfully convicted. OCOG's support was critical in a multi-year battle to provide an avenue for the Innocence Project at the University of Cincinnati to evaluate these claims. (Caster v. City of Columbus)

The cost of such briefs is high – ranging from a minimum of $5,000 in most cases to $10,000 or considerably more with additional appeals adding more costs. Given OCOG's resources, only one or two cases a year can be considered.

These issues never go away. There is an urgent need for an organization such as OCOG to help fight these battles. The Coalition particularly seeks support to bolster the Hal Douthit Fund, named after OCOG's founding board chairman, and maintained to cover the expenses for legal work.

Donations to OCOG can be mailed to the address above. You can also submit donations online at www.ohioopengov.com.

Join OCOG

Any non-Ohio Newspapers Foundation member may submit an application for OCOG membership to the OCOG trustees for approval. Membership includes use of the OCOG hotline through the OCOG retainer to Baker & Hostetler and two issues of the OCOG newsletter. The cost of OCOG dues varies with the membership category the applicant falls under. The categories and dues prices are as follows:

Attorneys and Corporate Members	$70
Non-Profit Organizations	$50
Individual Membership	$35
College & University Students	$25
High School Students	$10

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