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The NEFAC Report

New England's monthly right-to-know dispatch

November 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.

Conn. bishop tells congress bills protect religious rights

WASHINGTON - In an escalation of the U.S. bishops' campaign against "grave threats to religious liberty," Bishop William Lori of Bridgeport, Conn., endorsed three bills designed to strengthen First Amendment rights.

The bishop, who heads the newly established Ad Hoc Committee on Religious Liberty for the U.S. Conference of Catholic Bishops, testified before Congress Oct. 26.

"I am here today to call to your attention grave threats to religious liberty that have emerged even since June - grim validations of the bishops' recognition of the need for urgent and concerted action in this area," said the bishop. "I focus on these because most of them arise under federal law and so may well be the subject of corrective action by Congress." [Read more](#)

- Joan Frawley Desmond, National Catholic Register

11/15/11

Secrecy surrounds VT search warrant process

Vermont police obtain hundreds, maybe thousands, of search warrants each year to enter private homes and businesses, to record conversations secretly, and to obtain GPS tracking information on personal vehicles -- but nobody keeps track of the numbers or the results of the warrants.

The police who seek the warrants, the prosecutors who review the requests, and the state judges who ultimately must approve them, all say they are not required to provide any type of annual report or compile any statistics about search warrants.

A shroud of secrecy covers much of the search-warrant process in Vermont, an investigation by the Burlington Free Press shows. And it's not just the lack of statistics. [Read more](#)

- Mike Donoghue, The Burlington Free Press

11/13/11

NH Family wants to see video of bus driver berating son

An Atkinson, N.H., family may file a civil lawsuit against the Timberlane Regional School District after a school bus driver allegedly berated their 11-year-old son.

Two weeks ago, Eric Roux said, his son got off the bus and immediately broke down crying.

"My son said the bus driver yelled at him continuously for 30 minutes," Roux said. "He got yelled at for not having his backpack in his lap and said something fresh. The bus driver immediately stopped and screamed at him, close enough where he got spit on his face. He called him stupid idiot for the next 10 stops."

Timberlane contracts with First Student for bus transportation. Every school bus is equipped with a small video camera, so the incident with driver Al Lamonica was recorded. [Read more](#)

- Cara Hogan, The Eagle-Tribune, Lawrence, Mass.

Release of info on CT employee discipline case endorsed

We welcome a Freedom of Information Commission hearing officer's sharply worded recommendation that the commission order the release of all documents concerning the disciplinary actions taken against Stonington Highway Department employee Ernie Santos.

Rather than following state law, wrote Norma Reiss, the town administration blocked The Day's access to the information, and so the public's, to accommodate the employee's wishes.

"It appears from the evidence provided that the respondent (town of Stonington) ceded exclusive power to Mr. Santos to make the disclosure decision," the hearing officer wrote.

That is the exact point this newspaper made in prior editorials. Mr. Santos did not want the information released so the town withheld it, disregarding the state law requiring access to public information. Outrageous. We fully expect the commission to adopt the recommendation at its Dec. 14 meeting.

[Read more](#)

- *The Day, New London, Conn.*

11/11/11

MA high court hears challenge to live courtroom streaming

The far-reaching effects of the Internet on the First Amendment are under scrutiny as the state's highest court considers the content of cases being streamed live from Quincy District Court.

The Supreme Judicial Court heard arguments Tuesday regarding National Public Radio station WBUR's airing, on opencourt.us, of a court hearing held for a man charged with kidnapping a 15-year-old girl and forcing her into prostitution.

Since May, WBUR has been streaming arraignments and other court proceedings as part of a pilot program that gives online viewers a front-row seat to see the legal system at work.

The office of Norfolk County District Attorney Michael Morrissey later objected to a dangerousness hearing in the prostitution case being available on the Internet. The matter was brought to Supreme Judicial Court Justice Margot Botsford, who held a hearing and then referred arguments to the full court.

Assistant Norfolk County District Attorney Varsha Kukafka said the young girl in the case would be victimized again if information that could identify her showed up on the court website. [Read more](#)

- *Dennis Tatz, The Patriot Ledger, Quincy, Mass.*

11/8/11

Nantucket boards to post meeting info 48 hours in advance

NANTUCKET, Mass - Elected officials always like to talk about bringing transparency to government, but the Board of Selectmen last night actually took a significant step in that direction.

At the direction of chairman Rick Atherton, the selectmen approved a new policy directing town boards, committees and commissions to post all public meeting materials - typically known as the agenda packet - on the town's web site at least 48 hours prior to the meeting.

"It's transparent and it's part of an open government," Atherton said.

The policy also calls for government bodies to post all subsequent information, such as meeting minutes, online as soon as possible following meetings.

"This policy is intended to provide Nantucket citizens and interested parties access to the information and to be able to make informed judgments about their level of interest or participation in the process of the government and management of our town," the policy states. [Read more](#)

- *Jason Graziadei, The Inquirer and Mirror, Nantucket, Mass.*

11/7/11

Police, firefighters head list of NH top 500 state pensioners

CONCORD, N.H. - Police and firefighters top the list of the highest pension earners for the New Hampshire Retirement System, with former Dover police chief William Fenniman at the top, receiving \$135,878 in 2010.

The list of the state's top pensioners is dominated by emergency responders serving the state's largest communities, including Manchester, Nashua, Londonderry and Salem. Many are former fire and police chiefs.

Retired Manchester Police Department captain Richard Valenti earned the second-highest pension - \$133,633. Retired Manchester fire chief Joseph Kane was fourth, receiving \$119,646; former Portsmouth police chief Michael Magnant was third, with \$121,334.

Douglas McDonald, retired as superintendent of the Timberlane Regional School District, is one of only two non-police or firefighters to make the top 35.

- Gary Rayno, New Hampshire Union Leader

11/9/11

Public's right to know wins out over pensioner privacy

How do you balance an individual's right to privacy versus the public's right to know how its tax dollars are being spent?

By leaning toward the side of public disclosure, which is exactly what the state's high court did last week in settling a dispute over the release of personal pension information.

In February 2010, the New Hampshire Union Leader filed a right-to-know request with the New Hampshire Retirement System, seeking the names and amounts paid to the top 500 pension earners in 2009.

The agency balked at releasing that information, citing its obligation to protect the privacy interests of the former municipal, county and state workers. Instead, it produced a list containing the amounts paid to more than 23,000 individuals who collected a pension that year, but they were only identified by classification: police, fire, teacher or other employee. [Read more](#)

- The Telegraph, Nashua, N.H.

11/7/11

Two NH court decisions affirm public's right to know

The people's right to know what government is doing is being maintained and perhaps strengthened in New Hampshire thanks to vigilant press and civilians, and courts that understand this constitutional imperative.

Two cases decided last week were particularly encouraging. In one, a judge let police know that this is not a police state. In the other, the state Supreme Court unanimously reiterated what should be obvious: The public has a right to know where the public's money goes.

The fact that both issues had to go to court is as troubling as the outcomes are comforting. [Read more](#)

- New Hampshire Union Leader

11/6/11

NH court says recipients and amounts of pensions public

The state Supreme Court today ruled the public has a right to know the names of those receiving public pensions and the amount of their retirement benefits.

In a 5-0 decision, the high court found the public's interest in knowing how public funds are spent outweighs individual privacy interests.

It upheld a lower court decision ordering the New Hampshire Retirement System disclose the information to the Union Leader Corp., publisher of the state's largest newspaper.

"The public has an interest both in knowing how public funds are spent and in uncovering corruption and error in the administration of NHRS," Associate Justice Gary E. Hicks wrote in the 11-page decision.

"It appears then, that Union Leader seeks to use the information to uncover potential government error or corruption. We cannot say that there is no public interest in such a use," Hicks wrote.

The ruling affirms a 2010 Hillsborough County Superior Court decision ordering the New Hampshire Retirement System to disclose to the Union Leader Corp. both the names of the 500 state retirement system members who received the highest annual pension payments from Jan. 1 to Dec. 31, 2009 and the amounts each received that year. [Read more](#)

- *Kathryn Marchocki, New Hampshire Union Leader*
11/3/11

City inconsistent on releasing records on cop charges

South Burlington has released traffic stop documents related to former police Cpl. Jack O'Connor to one individual but withheld the same documents from the public, claiming at one point that they are not public records at all.

Secretary of State Jim Condos said the city seemed to want to "have it both ways" by releasing the documents to one individual under a confidentiality agreement while simultaneously denying another request for the record. Maria Archangelo, president of the Vermont Press Association, described the city's position on the records as "confusing." Allen Gilbert, director of American Civil Liberties Union Vermont, called it "frightening."

For their part, South Burlington officials first described the traffic records as public records, then said they are not before finally clarifying that they are. In any case, the city says, the records should not be made available for public scrutiny because they are relevant to legal cases South Burlington faces. [Read more](#)

- *John Briggs, The Burlington (Vt.) Free Press*
10/31/11

Court says details of camera operations not public info

DOVER, N.H. - The N.H. Supreme Court has ruled that the titles of those who monitor the use of surveillance cameras filming public areas - but not the precise location or other operational details of the devices - must be released by the Police Department.

Police Chief Anthony Colarusso said the department was very pleased by the ruling, which rejected a resident's Freedom of Information arguments.

"Our primary purpose was to ensure that the integrity of the camera system and reasons for it were maintained," Colarusso said.

David Montenegro, the resident behind the case, who protests regularly downtown against misuse of power by police, could not be reached Wednesday for comment on the ruling.

He asked for details such as camera location and operating times to be made public. Colarusso said not revealing the details of the cameras is important to safety with the concern being if people knew the exact locations of cameras and details of operations, they could somehow circumvent them. [Read more](#)

- *Andrea Bulfinch, Foster's Daily Democrat, Dover, N.H.*
10/31/11

Notion of open government missing in S. Burlington, Vt.

BURLINGTON, Vt. - The way South Burlington handled a public records request related to a police traffic stop raises serious doubts about City Hall's understanding of open government and the basic workings of democracy.

Releasing public documents only under the threat of a lawsuit - and before the city can be held liable for full legal costs - is a slap in the face of the citizens whom government is supposed to serve.

Then to place restrictions on the information - essentially dictating which part of the public can see the documents - reflects a worldview that runs counter to the basic premise of equal access for all. [Read more](#)

- *The Burlington (Vt.) Free Press*
10/30/11

Malloy won't reveal details of \$291 million lab deal

HARTFORD - Senate Republicans have been unsuccessful in obtaining the details of the \$291 million deal between Jackson Laboratory and the state because Gov. Dannel P. Malloy has refused to reveal the documents - in the same way that documents were not released in Florida.

The letter of intent, which outlines the details of the agreement between the two sides, has remained confidential because the Malloy administration says it contains trade secrets.

In similar fashion, Jackson refused to reveal details of its proposal in Florida, which was eventually withdrawn after a storm of local opposition. [Read more](#)

- *Christopher Keating, Hartford Courant*

10/26/11

FOI expert finds transparency lacking in consolidation talks

STAMFORD, Conn. - Volunteer fire department leaders and city officials attended a series of closed-door meetings last year to hammer out what became a five-year, \$42.3 million contract between the city and the fire companies, according to a collection of emails and meeting agendas obtained by The Advocate.

The formal meetings, which began last summer after Mayor Michael Pavia announced he would pursue consolidating four of the five volunteer fire departments in Stamford, lasted for several weeks until its chairman suspended them in favor of more informal meetings. The end result, a contract that would force four of the fire departments to operate as a joint-venture, is currently under review by the city's Board of Representatives.

A freedom of information law expert says the lack of transparency in the consolidation process is disconcerting. [Read more](#)

- *Jeff Morganteen, The Stamford (Conn.) Advocate*

10/26/11

Maine gambling board says 'no' to secret casino ownership

AUGUSTA, Maine - Three members of the Gambling Control Board Tuesday rejected an attempt to keep secret the ownership of BB Development, applicants to operate a casino in Oxford County.

"We are not fighting the issue of releasing the names," said Melissa O'Dea, the attorney for BB Development, "no matter how minute the interest. I don't think the public needs to know the exact percentage that the person owns."

The names of the owners of BB Development have not been made public and won't be until the issue is resolved.

Gambling board Executive Director Patrick Fleming brought the issue to the board because of two requests under Maine's Freedom of Access Act for copies of the application, which include the names of company owners as well as ownership percentages. He said the law governing the gambling board spells out the need for it to decide what information is "an unwarranted invasion of privacy," which was one of O'Dea's claims for limiting the disclosure of how much of BB Development each person or entity owns. [Read more](#)

(Eds note: BB Development later said it would comply with the gambling board's ruling.)

- *Mal Leary, Capitol News Service*

10/25/11

Advocates hope for a more transparent Beacon Hill

BOSTON - Government transparency advocates hope backroom casino talks and recent Beacon Hill scandals will lend new momentum to legislation that would toughen open meeting and public record laws this year.

Supporters especially hope to pass one of several bills to finally end the Legislature's self-granted exemption from the state's Open Meeting Law.

"They're doing the people's business," said Robert Ambrogi, an attorney and executive director of the

Massachusetts Newspaper Publishers Association. Other pending legislation would:

Make public records easier to obtain electronically and at a lower cost.

Give the state's supervisor of public records greater authority.

Impose stiffer penalties for violating the Open Meeting Law.

Some legislators said they see a need for such measures as much as ever. [Read more](#)

- *David Riley, The Enterprise, Brockton, Mass.*

10/24/11

VT panel rejects one exemption, considers adding another

A swift decision by a legislative committee to reject a new exemption to the state's public-records law is an encouraging sign for open government in Vermont. More worrisome is the decision by the same lawmakers to continue looking at restricting access to how much of a break homeowners get in state property taxes.

The underlying issue in both cases is how much information taxpayers can get about how their money is being spent. Without transparency, there's no way to find out who benefits from state policies.

The legislators are on the Public Records Legislative Study Committee tasked with making sense of the more than 200 exemptions to the state's open records law to improve people's access to their government.

[Read more](#)

- *The Burlington Free Press*

10/21/11

\$3m gift will support First Amendment studies at Yale Law

NEW HAVEN, Conn. - Yale Law School students studying the freedom of expression will now have more resources at their disposal.

Floyd Abrams LAW '59, a renowned constitutional lawyer who specializes in the First Amendment, donated \$3 million to the Law School to establish an institute in his name dedicated to promoting freedom of speech, freedom of the press and access to information. The Floyd Abrams Institute will hold conferences and events about freedom of expression, while also funding the expansion of the Media Freedom and Information Access clinic, a faculty-led group of Yale law students who help journalists in old and new media address freedom of information and open access issues.

Abrams said he hopes the Institute will help educate people both in and outside the Law School community about the need for citizens to understand their First Amendment rights and how to protect them. [Read more](#)

- *Daniel Sisgoreo, Yale Daily News*

10/18/11

ME towns bristle at number, tone of info requests

AUGUSTA, Maine - Cities and towns struggling to address increased public skepticism of government have seen a spike in the number of information requests from residents who want to know exactly what their local officials are up to.

The Maine Municipal Association, which represents the interests of most cities and towns across the state, reported recently that as many as 20 communities have struggled to keep up with a "serial" influx of requests under the state's Freedom of Access Act.

Jay Feyler, Union town manager, said he has responded to 75 such requests from a small group of residents over a 12-month period. Nathan Poore, town manager in Falmouth, said he dealt with nearly 100 Freedom of Access Act requests last year from one resident alone.

In those towns and many others across the state, the number of requests and the suspicious tone of the residents asking for information has affected morale.

"In some cases, it's just plain harassment," said Maine Municipal Association spokesman Eric Conrad. "It distracts local officials from what they really should be doing." [Read more](#)

- *Eric Russell, Bangor (Maine) Daily News*

10/17/11

Comments welcome.

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