



New England First Amendment Coalition

The NEFAC Report

New England's monthly right-to-know dispatch

July 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.

Town officials file open meeting law complaints

STURBRIDGE, Mass. - In the space of two days last week, three open meeting law violation complaints were filed in town - two by selectmen claiming the Tantasqua Regional School Committee violated the law, the other by a school committee member claiming the chairman of the Board of Selectmen had violated the very same law.

In her complaint filed on Tuesday, Selectman Priscilla Gimas said Tantasqua committee member James P. Ehrhard of Sturbridge had private discussions with school committee members from four district towns and with four and possibly five members of the Sturbridge contingent on the school committee. She said Mr. Ehrhard admitted these talks at a selectmen's meeting July 5.

"It appears to me that Mr. Ehrhard may have also had discussions with more than this amount of individuals," Ms. Gimas said in her complaint. "The issue discussed involves the appointment of an individual to fill the current vacancy and, for this reason, I believe it was intentional." [Read more](#)

- Craig S. Semon, *The Telegram & Gazette, Worcester, Mass.*

7/18/11

Withholding info stirs suspicion about government

NEWBURYPORT, Mass. - Two examples of selectmen withholding important information from the public - one in West Newbury and the other in Newbury - have come to light in the past couple of weeks.

Both have created suspicion and anger, and both call out for full public disclosure so that the public can have some real understanding of the actions taken.

West Newbury has been embroiled for months in the selectmen's controversial decision not to renew the contract of its longtime finance director, Tracy Blais. Selectmen have not yet provided a detailed explanation of why Blais was let go, and Blais in turn has filed a lawsuit against the town that contains damning accusations regarding inappropriate behavior and management by selectmen who ousted her. Blais' lawsuit calls into question the motivations of those selectmen, and certainly gives West Newbury citizens cause for concern about the conduct of their elected leaders. [Read more](#)

- *Daily News, Newburyport, Mass.*

7/18/11

Editor addresses newspaper's involvement in story

GLOUCESTER, Mass. - Every now and then, a story arises in which we here at the Times are not just the reporting party, but one of the subjects as well.

One of those stories surfaced last winter and in the spring, when we dealt firsthand with a pair of lengthy power outages, and included our own challenges in the story to give readers a greater sense of the impact such outages can have on businesses as well as residents.

Now, another one has cropped up over the last two weeks, but in a very different way.

Now, as I've noted in the past, one of the prime standards of journalism has always been for a reporter,

photographer or newspaper as a whole to cover the story, not insert yourself or itself into it. And that especially holds true today, with the advent of online news reports and 24-hour TV news channels that, all too often, seem to make "news" by reporting the views of their commentators. [Read more](#)

- *Ray Lamont, Daily News, Gloucester (Mass.) Times*
7/16/11

Newspaper looking at one open records exemption a day

BURLINGTON, Vt. - In January 2007, the Legislative Council delivered to lawmakers a report on the state's public records law "and the numerous exemptions to the public records requirements throughout the Vermont statutes." The report identified 206 exemptions. But that report, believe it or not, was incomplete. Since then, additional exemptions have been identified and Secretary of State Jim Condos estimates known exemptions to number more than 260.

A bill passed by lawmakers and signed into law by Gov. Peter Shumlin this year requires the Legislature to go over the exemptions with an eye toward weeding them out. The goal is more access to government records...

The Free Press Opinion page is publishing one exemption a day as cited in the original Legislative Council report. These exemptions will become the fodder for a fuller debate in coming years of the Legislature. The Legislature can be certain of one aspect of this debate -- full exposure of all laws that permit government to hide behind a veil of secret decision making. [Read more](#)

- *The Burlington (Vt.) Free Press*
7/14/11

Newspaper seeks documents on ousted police chief

REHOBOTH, Mass. - Rehoboth Selectmen Joseph Tito and Michael Costello erred Tuesday when they refused the motion by Selectman Donald Leffort to make public 30 pages of documents the board had collected regarding Stephen Enos, who was, in effect, fired the same night.

The Sun Chronicle is filling a request with the state to force release of the documents, which are reported to contain complaints made by officers against Enos and his responses to them. These papers would shed light on how the Rehoboth police department operates - at least how it operated during Enos's three-year term as chief - and that falls squarely into the realm of the public's right to know.

Where Costello alleges the police department was politicized during the Enos administration, it is particularly important that the public be given a full accounting. Some degree of political influence on local police departments may be inevitable, but it can reach a threshold where it is undemocratic and downright dangerous. Rehoboth should be on guard, and start by accepting full public accountability for what has gone on in the past. [Read more](#)

- *The Sun Chronicle, Attleboro, Mass.*
7/14/11

FOI commission denies The Day access to photos

STONINGTON, Conn. - The state Freedom of Information Commission voted unanimously this afternoon to uphold a hearing officer's recommendation that state police do not have to release images that First Selectmen Ed Haberek allegedly sent to a Pawcatuck woman using his town-issued BlackBerry in January 2010.

The Day had requested access to the state police investigation and had filed a complaint with the commission when state police refused to release the material.

Police said the material was exempt from disclosure under the Freedom of Information law because the investigation ultimately involved uncorroborated allegations and a signed witness statement and records that, if disclosed, would constitute an invasion of personal privacy. [Read more](#)

- *Joe Wojtas, The Day, New London, Conn.*

"Concerned Citizens" drive Maine town clerk to quit

COLUMBIA FALLS, Maine - Muriel Smith, who has been the administrative assistant and town clerk of this coastal town for 13 years, said that Wednesday was one of the worst days of her life.

"I didn't go to work today," she said emotionally. Smith, 65, has resigned her position, saying she was driven from her job because of the insistent interference of a small group of residents who have been labeled "The Concerned Citizens."

A couple of those residents interviewed Wednesday, however, said they are concerned, active participants in town affairs and have not asked for any information they are not legally entitled to have.

"Enough is enough," Smith said. "No matter what anyone in the town office - the staff, the selectmen - no matter what anyone does, it is wrong in their estimation. [The Concerned Citizens] disagree with anything and everything."

Smith said the town of 560 people is being "torn apart and split by the actions of just a half dozen people."

Selectman Alan Grant admitted Wednesday that the board is feeling "a little bit attacked. I guess they don't trust us. You know, in small town politics if you don't like someone, you try to get them out." [Read more](#)

- Sharon Kiley Mack, *Bangor (Maine) Daily News*

7/13/11

Maine group complains price for housing info too high

AUGUSTA, Maine - A conservative think tank says the Maine State Housing Authority wants to charge too much money to release basic financial information for a public website disclosing the cost of government.

The Maine Heritage Policy Center held a State House press conference Tuesday to say that a request for payroll and expenditure data from 1998 through 2010 was billed for \$8,710.

"The data we requested of the Maine State Housing Authority is no different than the data we requested of every other government agency on MaineOpenGov.org., yet their time and cost estimates to provide the data are by far, the highest we have ever been quoted," said David Crocker, director of the Center for Constitutional Government at the policy center. [Read more](#)

- Susan M. Cover, *Kennebec Journal, Augusta, Maine*

7/13/11

FOI meeting wraps up illegal meeting complaint

CROMWELL, Conn. - A representative of the state Freedom of Information Commission met with the board of selectmen Wednesday night, officially ending a complaint case that stemmed from an illegal meeting of five selectmen in February.

Tom Hennick, the FOIC's public information officer, held an informal workshop to review FOI laws regarding meetings of public agencies. First Selectman John Flanders filed an FOI complaint in February, accusing Deputy First Selectman Richard Newton and selectmen Patrick Ahlquist, Allan Spots, Al Waters and Ann Halibozek of holding an illegal meeting.

The five met after a police investigation into the sale of land at 28 Senator Drive. They later released a statement saying that "public confidence in local government" had been eroded. The announcement came after Cromwell police recommended that Flanders be charged with first-degree larceny for his part in the land sale, even though Middlesex State's Attorney Timothy Liston declined to press charges, saying that Flanders had lacked requisite criminal intent. [Read more](#)

- Kat J. McAlpine, *Hartford Courant*

7/13/11

Mass. DOT won't release bridge inspection report

The state Department of Transportation is declining to make public a safety-inspection report on the Brightman Street Bridge because of what a spokesman said are security risks.

Bridge inspection reports are considered "security-sensitive information" by state statute and are not available for the public, spokesman Michael Verseckes said. The department, he said, "can't have information out there that would expose (the bridge's) weaknesses to someone who wanted to do something nefarious."

On Friday, The Herald News filed a Freedom of Information Act request to obtain the inspection report that led to the bridge's weight limit being reduced from 9 to 3 tons. [Read more](#)

- Grant Welker, The Herald News, Fall River, Mass.

7/9/11

Public left out of budget deliberations in MA

The \$30.6 billion budget approved by the Legislature last week was negotiated almost entirely in secret, with six lawmakers meeting for 24 days of talks that were off limits to taxpayers. Debates, agendas, and even the times and locations of the meetings were held in strict confidence. No minutes were kept.

Information blackouts are treated with an almost religious reverence by the power brokers on Beacon Hill, who frequently decline to detail what is being discussed out of what they term "a respect for the process."

Massachusetts, the birthplace of American democracy, is one of fewer than 20 states with virtually no requirements that legislators discuss government business in public, according to a Globe review of open government data compiled by the Reporters Committee for Freedom of the Press. This state is one of about 10 in which the public does not have even limited rights to view legislators' records. [Read more](#)

- Noah Bierman, The Boston Globe

7/8/11

Obama's father considered putting him up for adoption

BOSTON - In the spring of 1961, President Obama's father revealed a plan for his unborn son that might have changed the course of American political history.

The elder Barack H. Obama, a sophomore at the University of Hawaii, had come under scrutiny by federal immigration officials who were concerned that he had more than one wife. When he was questioned by the school's foreign student adviser, the 24-year-old Obama insisted that he had divorced his wife in his native Kenya. Although his new wife, Ann Dunham, was five months pregnant with their child - who would be called Barack Obama II - Obama declared that they intended to put their child up for adoption.

"Subject got his USC wife 'Hapai' [Hawaiian for pregnant] and although they were married they do not live together and Miss Dunham is making arrangements with the Salvation Army to give the baby away," according to a memo describing the conversation with Obama written by Lyle H. Dahling, an administrator in the Honolulu office of what was then called the US Immigration and Naturalization Service. [Read more](#)

- Sally Jacobs, The Boston Globe

7/7/11

State faults counselor in Carney patient abuse case

BOSTON - State mental health investigators found that a male counselor on the adolescent psychiatric unit at Carney Hospital abused a female patient, the fourth confirmed case of abuse or neglect on the unit this spring.

Hospital president Bill Walczak fired all 29 mental health counselors and nurses on the unit in May, as well as two nurse managers, following five complaints against counselors. The latest finding brings to four the number of complaints that state investigators found to be valid.

The other cases included a counselor allegedly assaulting a 16-year-old female patient and a counselor allegedly assaulting a 15-year-old male patient. One of those incidents involved a sexual assault, Carney officials have said. [Read more](#)

- Liz Kowalczyk, *The Boston Globe*

7/6/11

45 years ago, Johnson signed FOIA law grudgingly

Forty-five years ago on July 4, 1966, Lyndon Johnson signed the landmark Freedom of Information Act at his Texas ranch. But the event does not appear on LBJ's Daily Diary, which is the first indication that the President was not happy about it.

Documents from the LBJ Library show that the usually outgoing President, who loved handing out pens at bill signings, refused to hold a formal ceremony for the FOIA, removed strong openness language from the press statement, and only agreed to approve the bill after the Justice Department suggested that he issue a signing statement to limit the law.

The back story on LBJ's grudging approval highlights the government's resistance to scrutiny. It also reveals historic tidbits about then-congressman Donald Rumsfeld as a FOIA champion and then-White House aide Bill Moyers as a FOIA opponent, at least in the beginning. [Read more](#)

- Charlene LaVoie, *The Register Citizen, Torrington, Conn.*

7/4/11

Revised MA open meeting law boosting complaints

PITTSFIELD, Mass. - Going by the numbers, it's been an ugly 12 months for open government in Berkshire County.

A revamped state Open Meeting Law went into effect one year ago, and since then, governing bodies in the county have been subject to more complaints than ever: 12, compared to only four filed during the prior 12 months.

One of those complaints, lodged against the Otis Board of Selectmen, resulted in an investigation by the attorney general, who recommended the board be fined \$1,000 for intentionally violating the law by holding a secret meeting of the town's selectmen at the Otis Poultry Farm. Otis is one of only two towns in the state found by Attorney General Martha Coakley to have intentionally violated the new law.

Coakley has forwarded the Otis matter to a hearing before an administrative law judge. [Read more](#)

- Ned Oliver, *The Berkshire Eagle, Pittsfield, Mass.*

7/4/11

AG clears release of info on RI pension beneficiaries

PROVIDENCE - Attorney General Peter F. Kilmartin's office has advised new state Treasurer Gina M. Raimondo that she is free to release the amounts the state is paying the beneficiaries of deceased state pensioners.

In response to a recent Journal inquiry, the treasurer's office disclosed that more than 400 retired government workers in Rhode Island, or their beneficiaries, are getting more than one taxpayer-subsidized pension that pays between \$11,236.92 and \$207,207 annually from the state-run retirement system for state employees, municipal workers and teachers. Some had three pensions.

But the treasurer's office withheld the names of all but 45 of the 425 multiple-pensioners, amid debate over what is and is not public under the state Open Records Law. In response to inquiries, a spokeswoman for Raimondo said it appeared that the state's Access to Public Records Act barred the release of any information about beneficiaries. [Read more](#)

- Katherine Gregg, *Providence Journal*

6/28/11

Legal now to report annulled criminal charges in NH

A town cop is charged with padding his hours in the department's computer system to collect more pay. After much legal maneuvering, a judge dismisses some charges and a jury acquits him of the rest.

Months later, the court file no longer exists. The charges have been annulled.

It's as if the arrest and trial never happened, except for one thing: The case had been reported on extensively, from the day charges were filed to the day the jury rendered a not-guilty verdict.

While newsprint versions fades, gets recycled or is used to start a fire in the woodstove, online stories have a life longer than plutonium. [Read more](#)

- *Patrick Meighan, The Telegraph, Nashua, NH*

6/27/11

Providence blocks release of former mayor's emails

PROVIDENCE, R.I. - The City of Providence is blocking the public from seeing any email messages sent and received by former Mayor David Cicilline during his final two years in office.

Assistant City Solicitor Amy Crane denied Target 12's request to see Cicilline's emails from 2009 and 2010, a period when the city's finances deteriorated into what his successor has termed a "category five" fiscal emergency.

Crane cited a provision of Rhode Island's public records law that allows the government to seal "correspondence of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities."

"Therefore, because David Cicilline was an elected official and his email account was used to send and/or receive correspondence in his official capacity as Mayor, your request is respectfully denied," Crane wrote in a letter last week. The denial arrived less than 48 hours after the request was sent. [Read more, view video](#)

- *Ted Nesi and Tim White, WPRI-TV, Providence, R.I.*

6/24/11

Maine town provides a lesson on doing it wrong

AUGUSTA, Maine - A frustrating aspect of most violations of Maine's open government laws is the ease by which officials, if they just zigged instead of zagged, could have respected the public's right-to-know and become shining examples of transparent governing.

Instead, as with the city of Hallowell, we get an object lesson for doing it all wrong.

Hallowell's city councilors recently selected a new city manager. This type of decision is customarily the most important one an elected board makes, as the successes or failings of the manager will be laid at the feet of those who did the hiring.

In recognition of this, some cities and towns go to great lengths to invite public input into their hiring process. Portland, for example, held several public hearings on its management search. Other towns empanel citizen boards to query possible candidates [Read more](#)

- *Kennebec Journal, Augusta, Maine*

6/23/11

RI senate passes bill opening records to adoptees over 25

PROVIDENCE - A cheer rose up from the balcony as the Senate on Wednesday unanimously approved a bill to unseal Rhode Island's birth records for adult adoptees who are 25 or older.

"I feel like I just won the Super Bowl," Kara Albano, a 28-year-old adoptee, said after the vote. She said she'd been trying to find out who her birth parents are since she was 16.

Her adoptive mother, Jackie Albano, stood by her daughter and smiled. "It's been a long wait," she said.

For more than two decades, advocates for adoptees' rights have tried, without success, to change a state law dating to 1944 that seals the original birth certificates of anyone who is adopted.

Bills to unseal the records for adult adoptees, at ages 18 or 21, were approved unanimously by the House in 2009 and 2010, but died in a Senate committee.

Wednesday's vote marked the first time in more than two decades that such a bill had reached the Senate

floor. The bill now heads to the House for a vote. [Read more](#)

- Lynn Arditi, *Providence Journal*
6/23/11

NOAA's attorney performance checks called inadequate

NEW BEDFORD, Mass. - NOAA, the federal agency under fire for overzealous enforcement of fishery regulations, is facing more criticism this week.

A previously unreleased report by Commerce Department Inspector General Todd Zinser has found serious weakness in the performance review process for fisheries law enforcement attorneys in the Northeast, some of whom have come under fire for vindictive and excessive prosecutions. The report describes a performance evaluation process at the NOAA office of General Counsel for Enforcement and Litigation as so superficial that it is nearly meaningless.

The report, partly redacted, was obtained by Brown in a Freedom of Information Act request that he said went 80 percent unfulfilled. [Read more](#)

- *The Standard-Times, New Bedford, Mass.*
6/23/11

VT high court ponders electronic privacy rights

MONTPELIER, Vt. - The Fourth Amendment to the US Constitution protects citizens from unwarranted searches and seizures of their "persons, papers, houses and effects," but it doesn't mention computers, iPads, smartphones, and other electronic devices.

Vermont's Supreme Court was faced yesterday with the challenge of adapting the federal and state constitutions to the digital age in an electronic privacy case.

The state complained that a lower court judge placed too many restrictions on a search warrant Burlington police got for a man's computer and other devices as they investigated allegations of identity theft. It's a case being watched closely by national groups devoted to studying how the law should be applied in cyberspace.

[Read more](#)

- Dave Gram, *The Associated Press*
6/23/11

State recommends fining town for open meeting violation

WAYLAND, Mass. - The state attorney general's office recommends fining the town \$1,000 for an intentional violation of the Open Meeting Law when selectmen last year discussed appointing members to a town commission before a scheduled meeting.

The punishment would be the first instance of the AG's office recommending a fine since taking over enforcement of the law from local district attorneys.

"This is not a mere technical violation, but a violation of a bedrock principle of government transparency," Assistant Attorney General Jonathan Sclarsic wrote in a letter to the board. [Read more](#)

- Michael Wyner, *MetroWest Daily News, Framingham, Mass.*
6/21/11

Dudley selectmen violated open meeting law - AG

DUDLEY, Mass. - The state attorney general's office has ruled that selectmen violated the state open meeting law when they did part of Peter M. Jankowski's performance evaluation behind closed doors.

Assistant Attorney General Britte McBride revealed the finding in a June 13 letter to then-board Chairman Paul M. Joseph.

At the board's Aug. 9 meeting, Selectman Steven P. Sullivan motioned to go into executive session citing Chapter 39, section 23B(3) for the purpose of a "preliminary employee evaluation," which is not among the 10 reasons permitted by law.

The Telegram & Gazette filed a complaint in August with the Dudley town clerk's office to determine if the executive session was a violation. [Read more](#)

- *Debbie LaPlaca, The Telegram & Gazette, Worcester, Mass.*
6/21/11

Comments welcome.

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