



New England First Amendment Coalition

The NEFAC Report

New England's monthly right-to-know dispatch

September 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.

Federal courts boost records access fees 25 percent

The federal courts announced on Tuesday that they would be increasing fees for accessing public court records by 25 percent, from 8¢ per page to 10¢ per page. Most Americans have never heard of PACER, the website the federal courts use to distribute judicial records. But for thousands of journalists, academics, and practicing attorneys, news of the fee hike produced a collective groan.

The courts emphasize that they haven't raised PACER fees since 2005, when they increased the fee from 7¢ to 8¢ per page. But with rising usage, revenues had been growing anyway. With the new increase, PACER revenues will likely exceed \$100 million per year.

What do the courts do with all that money? In 2007, a judicial committee reported that "significant unobligated balances have accumulated" as a result of growing PACER usage. It proposed to use the extra funds for various IT projects. [Read more](#)

- Timothy B. Lee, *Ars Technica*

9/14/11

"The Dark Side" conflicts with American values

The 10-year anniversary of the horrendous attacks of Sept. 11, 2001 provide an occasion for remembering and honoring the lives that were lost. This is also a time to reflect on what the last ten years have meant for our country. The hijackers had more in mind than killing people and destroying buildings that day - they wanted to attack and weaken the idea of America as much as the place.

On the evening of Sept. 11, 2001, President Bush assured the country that, "terrorist acts can shake the foundation of our biggest buildings, but they cannot touch the foundation of America." Times of national strife have always been hard on our civil liberties. President Bush seemed to be promising that this time would be different. The "foundation of America" - equal justice under law, freedom, privacy and fairness - would be safely guarded.

But that position only lasted for five days. On Sept. 16, Vice President Cheney shared with the nation the government's new position: In order to succeed in the fight against terrorism, America was going to have to work through "the dark side" using "any means at our disposal." [Read more](#)

- Zachary L. Heiden, *Bangor (Maine) Daily News*

9/9/11

ACLU seeks info on extent of police tracking in RI

PROVIDENCE - Tracking a person's cell-phone location can reveal whether he or she attends church, likes working out and who he or she spends time with when the workday is through.

Access to that data would give the police - or others - an unprecedented ability to zero in on a person's movements every day.

The use of that technology by law-enforcement agencies has drawn the ire of civil-liberties advocates nationwide. In Rhode Island, the state affiliate of the American Civil Liberties Union has requested information from the state police and the Providence Police Department showing the extent that Rhode Islanders are being

tracked.

The police have not yet responded to the Freedom of Information request, which is part of a national ACLU campaign. But cell-phone monitoring is one of dozens of concerns raised by the ACLU in a report detailing its perception of how civil liberties are faring in Rhode Island in the wake of the 9/11 terrorist attacks. [Read more](#)

- *Katie Mulvaney, The Providence Journal*
9/9/11

Still no explanation for town's rejection of \$2 million grant

MIDDLEBORO, MASS. - In case you were wondering - and lest you forget amid all those last-minute barbecues as summer turns to fall - we still don't know why the selectmen turned down that \$2 million federal grant that would have paid for staff to open the fire stations in North and South Middleboro for the next two years.

Some of you may no longer care - indeed, some of you may never have cared all that much, having chalked up the decision to, well, politics or the unwillingness of politicians to take a risk, or some facts that the rest of us weren't privy to, since all the real discussion took place behind closed doors.

And that's why we're still interested - the fact that we were never privy to the discussion from the start.

[Read more](#)

- *Middleboro (Mass.) Gazette*
9/8/11

Well maintained public records crucial to open government

BURLINGTON, Vt. - The failure to properly maintain public records undermines the whole concept of open government.

Public records -- especially those that document actions taken by the city's elected officials and civil servants - are a key instrument for citizens seeking to keep their government accountable.

That makes the controversy in South Burlington over benefits for a departed city manager as much an indictment against the state of record-keeping at City Hall as about whether he receives the money.

The lack of records that back up the memories of city councilors also raises questions about what other public documents are missing, inaccurate or incomplete, and it should be a cause for concern about the accountability of South Burlington's city government. [Read more](#)

- *The Burlington (Vt.) Free Press*
9/8/11

ACLU says terror attacks cast shadow over civil liberties

PROVIDENCE - The American Civil Liberties Union says the terror attacks of Sept. 11, 2001 cast a long shadow over civil liberties in Rhode Island.

The state's ACLU chapter issued a report Thursday detailing several instances since 9/11 in which it says concerns about terrorism trumped personal liberties.

The ACLU said a Sikh man was arrested at the Providence train station the day after 9/11 when others grew suspicious of his turban. It said federal officials monitored a local war protest for links to terrorism, and public school students were disciplined for refusing to wear a flag lapel pin or stand during the Pledge of Allegiance.

The group said the University of Rhode Island submitted student records to the FBI without notifying the students, and state officials limited access to certain previously public records and restricted access to public buildings. [Read more](#)

- *The Associated Press*
9/8/11

Failure to post meeting draws suit from ACLU

PROVIDENCE - The Rhode Island Affiliate of the American Civil Liberties Union filed suit Tuesday in Superior Court against the state Department of Public Safety, alleging that the agency failed to provide the public with adequate opportunity to comment on controversial regulations it put in place regarding public access to its records.

Steven G. O'Donnell, the superintendent of the state police who also serves as commissioner of public safety, was also named as a defendant in the civil suit. The lawsuit, filed by ACLU volunteer lawyer Jennifer Azevedo, argues that the Department of Public Safety violated a state law known as the Administrative Procedures Act, which is designed to ensure that executive agencies in Rhode Island go through a public rule-making process in adopting policies governing their conduct.

The lawsuit alleges that last November and again in August, after issuing public notice that it was revising its Access to Public Records Acts regulations, the Department of Public Safety made "last-minute" amendments to its proposed policies just before the hearings began, leaving the ACLU and other interested groups and individuals unable to present "meaningful testimony." [Read more](#)

- Tracy Breton, *The Providence Journal*
9/7/11

New CT record exemptions will hamper historians

In less than a month, historians, authors and biographers will have to contend with one of the most sweeping - and impenetrable - exemptions ever to hit Connecticut's Freedom of Information Act.

An 11th-hour amendment tucked into an omnibus health bill effectively will cloak as of Oct. 1 virtually all material ever recorded that could be considered privileged under current law. The amendment was filed after the state Department of Mental Health and Addiction Services failed to win passage of a bill earlier this year that would have reversed a ruling requiring it to release the treatment records of Civil War veterans.

The new law, approved without any public comment, will exempt from freedom of information disclosure any privileged records created in marital relationships, clergy-penitent relationships, doctor-patient relationships, therapist-patient relationships "or any other privilege established by the common law or the general statutes." [Read more](#)

- Thomas B. Scheffey, *Connecticut Law Tribune*
9/5/11

Maine's governor keeps schedule to himself

AUGUSTA, Maine - Gov. Paul LePage's administration has not publicly released the governor's daily or weekly schedules since he took office in January, breaking with more than 30 years of practice by governors and raising questions about his vow to have a transparent administration.

During last year's gubernatorial campaign, LePage's website included a section called "your right to know," which emphasized his commitment to strengthening the state's Freedom of Access Act.

"When Paul is governor, open government will be a reality, not a talking point," the website said. "Any roadblocks Mainers face in the pursuit of public information from a governmental entity must be torn down."

There also was a pledge to create a Maine version of C-SPAN to broadcast live proceedings from the State House, including "key gubernatorial presentations."

"Maine people deserve a close look underneath the State House dome to see what politicians are up to," the website said.

Now, on a daily and weekly basis, reporters and the public don't know whether the governor is in state or out of state, who he's meeting with, or whether he is in Augusta or elsewhere in Maine. [Read more](#)

- Susan M. Cover, *Kennebec Journal, Augusta, Maine*
9/4/11

Digital radio, encryption silence police scanners

MERIDEN, Conn - Like a deadbolt or a faithful guard dog, Wayne Gdovin always viewed his police scanner as a way to keep his family safe.

The crackle of the small, analog, programmable scanner with the chatter of city officers and dispatchers has been a familiar sound at his Johnson Avenue home for the last 25 years. Last week, however, city police switched their signal to digital to comply with federal communications regulations, and the old radio has suddenly gone quiet.

Gdovin, a father of three and grandfather of eight, is considering buying a more expensive digital scanner to continue listening in, but he is also concerned about a plan to encrypt police communications. Once put into

place, the new technology would shut out anyone without access to a special code, regardless of their equipment. [Read more](#)

- *Dan Ivers, Record-Journal, Meriden, Conn.*
9/2/11

Ruling on political giving raises doubts about state laws

To casual observers the U.S. Supreme Court's 2010 decision in *Citizens United v. Federal Election Commission* simply unleashed an unlimited amount of corporate and union money into the political process.

But it also unleashed a flurry of questions about the validity of laws across the country to control campaign and political contributions.

To quote from a recent Washington Post article by Robert Barnes:

"But the fight goes on over questions still remaining from the court's controversial 5 to 4 decision. Issues such as how the government may regulate disclosure of spending, and whether bans on direct corporate contributions to candidates are compatible with the court's reasoning in *Citizens United*, are being litigated from one coast to the other." [Read more](#)

- *Foster's Daily Democrat, Dover, N.H.*
8/27/11

NFOIC survey shows interest in government transparency

The CMLP's friends at the National Freedom of Information Coalition and the Media Law Resource Center have just released the results of a recent survey of citizen interest in government transparency and the willingness of traditional media outlets to fight for access to government information.

For those of us who have been watching the sunshine scene, it will come as no surprise that traditional outlets are devoting fewer resources to accountability reporting, and in particular to litigating access issues. The results of the new survey, however, illustrate the scope of that troubling trend -- especially when considered in light of a 2009 survey by the NFOIC and MLRC on the same topic.

More surprising, perhaps, are the survey's results with respect to the interest and assertiveness of the public with respect to their rights to open government. (Hint: it's good news.) [Read more](#)

- *Jeffrey P. Hermes, Citizen Media Law Project*
8/24/11

Maine police increasingly use Facebook to gather info

ELLSWORTH, Maine - Surveillance images of thieves stealing scrap metal were posted on the Ellsworth Police Department's Facebook page on Friday, and by Monday the perpetrators were arrested and in custody, Police Chief John DeLeo said.

"That got solved because of the Facebook page," he said this week, explaining that no other medium allows for such an immediate transfer of information to a large group of people.

The Ellsworth Police Department is one of many in Maine - both large and small - that have jumped on the Facebook bandwagon.

"We get a lot of day-to-day information out there [to the public] and we've been able to solve quite a few crimes by posting pictures or videos on the page," DeLeo said.

News media outlets, including the Bangor Daily News, also use the various police Facebook pages to get information.

While many police departments around the state have Facebook pages, how they are used differs drastically. [Read more](#)

- *Nok-Noi Ricker, Bangor Daily News*
8/24/11

VT site now offers public data on state's vendors

Vermont citizens and news media can now readily find out the names of vendors selling goods and services to state government, and the purpose and amounts of the transactions involved. The Vermont Transparency site (www.vttransparency.org) now allows viewers to quickly sort through over 121,000 vendor transactions

occurring over the first three quarters of FY 2011 (through March 31, 2011).

The site now reveals, for example, that in fiscal 2010 Vermont spent \$25 million to provide heating fuel assistance, almost \$24 million to rent heavy equipment and other construction machinery, and \$22.5 million in interest on state bonds.

As other examples, the site shows that Newcomb Studios of Montpelier, run by cartoonist Tim Newcomb, received six payments from state agencies, totaling \$9,238, for graphic arts work. The Vermont Natural Resources Council, with seven registered lobbyists, received one payment of \$9,181. [Read more](#)

- *VTDigger.org*
8/22/11

Transparency group wants town info posted on web site

BROOKLINE, N.H. - The road to greater transparency in town government is lined with Web sites, live chats, cable access, and other technologies.

And Friday morning, during the first meeting of the Brookline Transparency Committee, held at Town Hall before it opened for business, Chairman Dennis Skey predicted that technology would allow the group to save time and money while meeting its goals.

"Right now, people are more transparent than government. Government has information about you, but they (governments) don't show what they do," Skey said.

Skey wants the town to post everything from officials' contact information to budgets, audits, contracts, tax information, and more, on its Web site. [Read more](#)

- *Hattie Bernstein, The Telegraph, Nashua, N.H.*
8/20/11

Police release redacted version of deadly 911 call

WATERVILLE, Maine - The Maine Department of Public Safety on Friday released written transcripts of the 911 calls involving the murder of Sarah Gordon in Winslow on June 6, shedding new light on the emergency response.

But the transcripts, created in response to an open records request by the Morning Sentinel, still don't answer a fundamental question: Why were police initially dispatched to the wrong address?

The department has blacked out relevant portions of the transcript in which a dispatcher in Augusta spoke to Sarah Gordon on the phone minutes before she was gunned down outside her house by her husband.

What the transcripts make clear is that the situation was frantic and chaotic when Sarah Gordon called at 7:52 p.m. Her call was followed by calls from three witnesses.

"My husband's threatening to kill me and my friends," Sarah Gordon told the dispatcher, in between giving her phone number and address. "He has a gun."

Public safety officials, in blacking out the street name spoken by Gordon and repeated by the dispatcher, cited state law as prohibiting the release of confidential information, even though the street name has been made public by police officials. [Read more](#)

- *Scott Monroe, Morning Sentinel, Waterville, Maine*
8/20/11

Mayor posts names of recall petition signers

LAWRENCE, Mass. - William Lantigua didn't care much for gay marriage five years ago when he was in the Statehouse, where he was one of just a few dozen Democrats who voted to hold a referendum that could have a repealed it in Massachusetts.

But Lantigua, now mayor, apparently admired the tactics gay marriage advocates used in their battle to block the referendum and is now borrowing from them as he wages a political battle of his own.

Last week on his campaign website, Lantigua posted the names and addresses of all 5,483 people whose names appear on petitions supporting his recall, meshing politics and the Internet in a way that was done for the first time in the United States in the battle over gay marriage in Massachusetts in 2005. That's when www.KnowThyNeighbor.org uploaded the names and addresses of the 143,356 people who signed petitions calling for the referendum that could have ended gay marriage in the state. [Read more](#)

Boston police sued for release of surveillance policies

The Boston Police Department has refused to release documents that describe its policies and practices for monitoring political protest groups and "suspicious activity" and should be forced by a judge to produce records, according to a lawsuit filed Wednesday by the American Civil Liberties Union of Massachusetts and other local activist groups.

"There have been significant changes in the surveillance operations of the BPD," said Laura Rótolo, staff attorney for the ACLU of Massachusetts, in a statement accompanying the lawsuit. "For years, the BPD has conducted surveillance of political protests, openly recording legal rallies, marches and demonstrations in public areas. But now that information can be centrally monitored, indexed, and stored electronically, and shared through state and national surveillance networks. We brought this suit because we believe the public should know what information is being collected about political activities, how it is being used, and what policies, if any, are in place to protect privacy and individual liberty."

[Read more](#)

- Kyle Cheney, *State House News Service*
8/18/11

RI state police concede witness statements are public info

SCITUATE, R.I. - The Rhode Island Department of Public Safety now acknowledges that a witness statement in a crime, a motor vehicle accident or other kinds of police incidents is a public record.

That implied acknowledgment is contained in proposed changes to department rules that would be adopted to implement the state Access to Public Records Act.

In effect, and at least for the time being, the department has bowed to advocates of government transparency who complained about the proposed rules changes.

Department officials have dropped from the proposed changes explicit language that inflamed critics by contending a witness statement taken in connection with an initial report of an incident or arrest is "not considered a public record." [Read more](#)

- Gregory Smith, *The Providence Journal*
8/17/11

NH House speaker defends order to clear public gallery

Back in March, when New Hampshire House Speaker Bill O'Brien locked the public out of the gallery above Representatives Hall, it seemed like an overreaction to a difficult situation.

The House was debating budget cuts and measures to curtail collective bargaining by unions. There were thousands of protesters outside the building and hecklers in the gallery. O'Brien was trying to maintain decorum. Rather than just toss out the noise-makers, he shut off all public access to the gallery.

In the heat of the moment, it was an unfortunate decision. But all these months later, for O'Brien to persevere in a court fight to establish his right to shut the public out whenever he wants is downright chilling.

O'Brien, through attorney Ed Mosca, recently responded to a lawsuit accusing him of acting unconstitutionally that day. In fact, O'Brien argues, he has the authority to lock the public out of legislative sessions whenever he chooses. [Read more](#)

- Concord (N.H.) *Monitor*
8/16/11

Comments welcome.

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