
OPEN OR SHUT?



ACCESS TO PUBLIC INFORMATION
IN RHODE ISLAND'S CITIES AND TOWNS

Statement about Authorship

This study was designed and written by fifteen students from Brown University, working under the supervision of Professor Ross Cheit. The fieldwork was conducted by the Brown students and by volunteers who were recruited from almost every city and town in Rhode Island. Most of the volunteers are members of Common Cause/Rhode Island.

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INTRODUCTION

THE RIGHT OF OPENNESS IN A DEMOCRACY

The accessibility of public records is of paramount importance in a democratic society. Citizens are entitled to view records that affect their taxes, safety, municipal government, children's education, or any other aspect of their public or private life. Citizens have a fundamental right to be apprised of the process and content of decisions made on their behalf. Any interference with this right prevents citizens from being involved in and aware of their government, and can lead to a weakening of their trust in the government. As Rhode Island law states, "It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy" (R.I.G.L. 42-46-1).

The Rhode Island Access to Public Records Act, commonly known as the Open Records Law, was originally enacted in 1979. Rhode Island was the 49th state to enact such a law. By ensuring public access to documents such as initial arrest reports, financial settlements of municipal lawsuits, and important information dealing with public education, the Open Records Law and Open Meetings Law empower citizens, ultimately making government more accountable. The Open Records Law and Open Meetings Law are integrally important to our political process and should be regarded as beneficial monitoring devices.

Regarding issues of secrecy and closed government, Supreme Court Justice Louis Brandeis put it best, remarking, "Sunlight is the most powerful of all disinfectants" (Freund, *The Supreme Court of the United States* (1949), p. 61).

LAST YEAR'S STUDY: ACCESS TO PUBLIC RECORDS

The original study was conducted last year by student researchers from Brown University and the University of Rhode Island. Prior to the study, *Access to Public Records: An Audit of Rhode Island's Cities and Towns*, complaints filed with the Attorney General and direct actions in Superior Court were the primary ways in which municipalities' compliance with the Open Records Law and Open Meetings Law was made known. Access to Public Records examined city and town clerks, school departments, and police departments for compliance with

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the Open Records Law and Open Meetings Law. The results were varied, and in some instances, troublesome. City and town clerks fulfilled 100% of the requests for the agendas and minutes of city or town council meetings and the city or town budget. School departments were asked to provide agendas and minutes of recent school committee meetings, district budgets, teacher contracts, and policy manuals. They fulfilled 94% of the requests. However, when school committee minutes were evaluated for compliance with the Open Meetings Law, the results were less heartening. About one-quarter of the school committees were not in compliance. The results of the police segment of the study were the most disappointing. Sixty five percent of the requests were rejected.

After the study was released, many municipal officials pledged to improve their practices. Cumberland Police Chief Anthony declared, "I can tell you right now, as far as access and policy goes, this police department is going to comply 100%" (John Castellucci, "Records Survey Scorned by Some," *Providence Journal*, March 18, 1998, C3). In Coventry, Town Administrator Marc Frobel declared that he would review "practices with the police and solicitor so if we are audited again, we will come up much better" (C. Eugene Emery, Jr., "Study Finds Most Records Available, but Blocks Remain," *Providence Journal*, March 18, 1998). We wanted to find out whether or not the cities and towns of Rhode Island increased their adherence to the Open Records Law.

WHAT WE REQUESTED AND WHY

In the fall of 1998, fifteen Brown University students, under the guidance of Professor Ross Cheit, and with the support of the A. Alfred Taubman Center, designed Rhode Island's second statewide Open Records and Open Meetings study. We felt that another evaluation was merited, as many city and town officials studied last year promised that more attention would be paid to the Open Records Law. Furthermore, in July 1998, the Open Records Law and the Open Meeting Law was amended and strengthened. This provided the opportunity to examine new provisions in both laws. The study is divided into three components: police, municipal legal claims, and school districts.

Each section included requests for documents that are clearly public under the Open Records Law and Open Meetings Law. Three initial arrest reports were requested from Rhode Island's police departments. The financial terms of the settlements of two lawsuits brought against

each municipal government were requested from Rhode Island's cities and towns. Blank teacher evaluation forms and professional development information were requested from Rhode Island school departments. Also, school committee minutes were analyzed and school committee chairpersons were interviewed to determine compliance with provisions in the Open Meetings Law.

Police Departments

Police departments are entrusted with tremendous authority over individuals' lives. To ensure that the police operate properly and do not abuse their various roles, citizens have a right to check their power. The inspection of initial arrest reports and police logs is one method of monitoring the police.

Rhode Island police departments were evaluated by three requests for specific initial arrest reports. The first initial arrest report was requested via letters from volunteers, who were recruited from across the state to assist with data collection for this study. The second and third initial arrest reports were requested via walk-in visits by volunteers and students, respectively.

In July of 1998, the Rhode Island General Assembly clarified the Open Records Law by adding the word "reports" to the portion that related to police records. The statute now reads, "Records relating to management and direction of a law enforcement agency and records or reports reflecting the initial arrest of an adult and the charge or charges brought against an adult shall be public" (R.I.G.L. 38-2-2 (4)(D)). This change codified the requirement that initial arrest reports be made available to the public under the Open Records Law.

Municipal Legal Claims

Citizens have a right to know the amount of money paid by their local government in the settlement of lawsuits. Financial settlements of lawsuits in which municipalities are defendants are ultimately paid by residents of the city or town, often through a taxpayer-financed insurance organization, the Rhode Island Interlocal Risk Management Trust.

The municipal legal claims component evaluated compliance by requesting the financial settlements of cases in which the municipality was listed as a defendant. Two letters, each requesting the financial terms of the settlement of a certain case, were sent to each city or town by the volunteers assisting with our study.

The municipal legal claims section of the report is

Volunteers & Common Cause

For the dual purpose of simulating the conditions that citizens might face when requesting information, and preserving the integrity of the study, volunteers, many of whom were affiliated with Common Cause, were recruited to assist with the data collection portion of the study. We screened the volunteers to ensure that they had no personal or professional conflicts with the study.

The volunteers worked closely with the students by writing letters and telephoning municipal officials. The volunteers also participated with the walk-in visits, allowing us to compare variables such as age with compliance.

Common Cause is a nonprofit organization with a stated mission to promote open, ethical, accountable, and effective government. Formed in 1970 as a "nationwide, independent, nonpartisan organization for Americans who want to help in the rebuilding of the nation," today Common Cause members number over 250,000.

Common Cause of Rhode Island is presently working on four major issues of local, state, and national significance; freedom of information, separation of powers, campaign finance reform, and reapportionment. Members and staff of Common Cause research, draft, and advocate legislation and policies to address these concerns.

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Open Records Law

The stated purpose of the Rhode Island Open Records Law is to "facilitate public access to public records" (R.I.G.L. 38-2-1). All state and local agencies and public bodies are required to comply with the Open Records Law. The law was amended in 1998 to clarify and strengthen the original 1979 Access to Public Records Act. After debate, the bill was passed and signed into law by the governor in July of 1998.

The Open Records Law applies to any state or local government body "which exercises governmental functions," as well as any person or entity acting on behalf of the public agency" (R.I.G.L. 38-2-2 (1)). The law defines "public records" as those "maintained by any public body, whether required by law or not," and those "made or received pursuant to law or ordinance in connection with the transaction of official business by an agency" (R.I.G.L. 38-2-3, 38-2-2 (4)).

Records from public bodies shall not be withheld "based on the purpose for which the records are sought" (R.I.G.L. 38-2-3 (h)). In other words, even if a public official does not like the reason why a person seeks a public record, he or she may not withhold it.

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firmly based upon the Open Records Law. Given that most cases were settled before 1998 and may not be covered under the newly amended law, it was decided that compliance would be measured using the pre-1998 version of the law which stated, "records reflecting the financial settlement by public bodies of any legal claims against a governmental entity shall be deemed public records" (R.I.G.L. 38-2-14). (The amended law strikes the word financial, making the entire settlement agreement a public record.)

School Districts

Several compelling reasons exist to examine school districts. Policies which affect children in the public school system should be subject to public scrutiny. Given the importance of the quality of teachers, concerned citizens and parents are interested in professional development and teacher evaluation policies. Also, since school districts consume a large portion of a municipality's tax revenues, it is important that they be accountable to taxpayers.

To check school districts' compliance with the Open Records Law, blank teacher evaluation forms and information on professional development were requested. Volunteers telephoned the schools to request the information.

The Open Records Law states that records "maintained by any public body, whether required by law or not" shall be open to the public unless they are specifically exempted in the law (R.I.G.L. 38-2-3). While an evaluation of a specific teacher clearly is not a public record, as the law states that "... information in personnel files maintained to hire, evaluate, promote, or discipline any employee of a public body," professional development policies and blank teacher evaluation forms are not exempt, and therefore are considered public information (R.I.G.L. 38-2-2 (4)(A)).

School districts were also evaluated for compliance with the Open Meetings Law. Some issues discussed by school committees are done so in closed (executive) sessions, away from public scrutiny. Executive sessions serve an important purpose for school committees, allowing them to discuss juvenile records and other sensitive information behind closed doors. The law requires that "A meeting closed to the public shall be limited to matters allowed to be exempted from discussion at open meetings by 42-46-5" (R.I.G.L. 42-46-4). The committee must specify the nature of business to be discussed in executive session (R.I.G.L. 42-46-4). The law also stipulates

as of July, 1998, that "all votes taken in executive session shall be disclosed" (R.I.G.L. 42-46-4).

According to the law, "The minutes of a closed session shall be made available at the next regularly scheduled meeting unless the body votes to keep the minutes closed" (R.I.G.L. 42-46-7 (c)). The law does not stipulate whether the vote to seal the minutes is to be taken in open or closed session, and it never requires that the closed session minutes be either sealed or open, leaving a great deal of room for interpretation.

School committees were evaluated on compliance with the Open Meetings Law in three ways: whether the minutes cite the law and the reason for recessing into executive session; whether executive session votes are disclosed; and if, how, and where executive minutes are sealed. Compliance was measured by analyzing four to six months of school committee minutes and by conducting interviews about committees' use of executive session with the school committee chairperson for each district.

LIMITATIONS

Several unavoidable limitations of this study raise issues about the generalizability of the results. First, in many instances, we dealt with only one or two officials in each municipal agency; the results of those observations may not characterize the entire department or office.

The study was also limited by the number of observations we could make in a limited period of time. We felt that if researchers requested more than three initial arrest reports, police departments may have become aware of being studied. In fact, even with only two requests per student researcher, several departments questioned whether the researchers were conducting another open records study. Student researchers made multiple visits to various departments, while the volunteers generally made only a single in-person request, which allowed the students to become more acquainted with the document requisition process. The average citizen might not know who to ask for records and what terminology to use.

The municipal legal claims component was limited to two mailed requests. We initially planned to use three observations, but preliminary research made it apparent that not all towns contained three cases that were suitable for this study. Also, since this component of the study was conducted entirely by mail, time was an issue. Because we were limited in the amount of weeks we had to complete our fieldwork, we could not send out many requests. Finally, since several cities and towns employ the same

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The statute defines denial as "failure to comply with a request to inspect or copy the public records within the ten (10) business day period" (R.I.G.L. 38-2-7 (b)). However, the law allows for a thirty (30) business day extension if the public body can demonstrate "good cause" (R.I.G.L. 38-2-7(b)).

The cost of records duplication and retrieval is also addressed by the law. The law states that the charges levied by custodians of records "shall not exceed fifteen cents (\$0.15) per page," and that "hourly costs for retrieval shall not exceed fifteen dollars (\$15.00) per hour" with no charge for the first hour (R.I.G.L.38-2-4 (a), (b)).

While the law has broad application, it also has twenty-three exemptions. Some of the exemptions in the statute pertain to trade secrets, juvenile proceedings in family court, charitable contributions, negotiations strategy, memoranda and working papers, test questions, medical records, tax returns, and library records (R.I.G.L. 38-2-4).

The Access to Public Records Act was amended by the Rhode Island General Assembly in July of 1998, for the first time since its inception. The amendment specifies, among other things, that initial arrest reports are public, and requires that the entire settlement in lawsuits against public bodies be public.

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Open Meetings Law

The Open Meetings Law requires that in order for a public body to enter into a closed meeting or executive session they are required to state and record in the minutes both the section of the law that allows them to bring an issue out of the public meeting, as well as the nature of the business to be discussed (R.I.G.L. 42-46-4).

The law allows public bodies to enter into executive session for eight reasons that include collective bargaining, the acquisition of property, and job performance, character, physical or mental health of an employee (R.I.G.L. 42-46-5 (1), (2), and (5)). School committees may also enter into executive session for the purposes of "(a) conducting student disciplinary hearings or (b) of reviewing other matters which relate to the privacy of students and their records. . . ." (R.I.G.L. 42-46-5 (8)).

The law stipulates that the "minutes of a closed session shall be made available at the next regularly scheduled meeting unless a majority of the body votes to keep them sealed" (R.I.G.L. 42-46-7 (4)(c)). A public body cannot assume that the minutes are sealed without an explicit vote, either during open or closed session. Even if the minutes summarizing the executive session are sealed, votes must still be announced during public session. "All votes taken in closed session shall be disclosed once the session is reopened; provided, however, a vote taken in a closed session need not be disclosed for the period of time during which its disclosure would jeopardize any strategy, negotiation, or investigation" (R.I.G.L. 42-46-4).

solicitor, similar requests from different jurisdictions were often referred to a single solicitor, potentially revealing that a study was being conducted.

The education component was limited in its study of the Open Meetings Law. Researchers analyzed four to six months of school committee minutes for compliance. These months may not necessarily be representative of the way committees use executive session.

Finally, there are reasons to believe that the compliance rates reflected in this study are higher than those that would be experienced by the general public. The group of researchers was not a diverse and representative group in terms of age (except for the general difference between Common Cause members and Brown students) or race. Therefore, the potential effects of discrimination were not measured. Furthermore, while excessive fees levied by some agencies may be troublesome for some people to pay, researchers were willing to pay them for the purposes of obtaining documents to analyze.

OVERALL RESULTS

Compliance rates were disturbing for police and municipal legal claims, while school departments were found to be generally more open.

Statewide, the police most often responded inadequately to requests for initial arrest reports. Some departments completely complied with the Open Records Law, but almost half of the departments never completely complied. The low results are disappointing given that the police were evaluated for compliance with the Open Records Law just last year, and vowed to improve. Due to the difference in methods and measures of compliance employed this year, it is not possible to quantitatively compare last year's results with the findings of this study.

Requests for the settlement terms of municipal legal claims were successful in only 23 out of 73 requests. This compliance rate (32%) is disheartening. A large number of requests received no response, while many other responses revealed poor records management practices. An analysis of the data indicates a need for better defined chain of custody for these records, and better knowledge of the law by municipal officials.

School departments had high compliance with records requests. In our initial research, we asked for contracts, minutes, and policy manuals, and, as long as we called ahead, we always received the necessary information.

There is room for improvement in school committee compliance with the Open Meetings Law. Generally, school committees lack a comprehensive understanding of the Open Meetings Law. For general compliance issues, such as citing the law when going into executive session, committees had high compliance rates. There is a high level of uncertainty regarding the specifics of the law, such as when to disclose votes from executive session, the legality of reaching consensus in executive session, and the types of reasons that are acceptable when entering into executive session. Overall, good intentions among school committee members ran high. Clarification and general understanding of the Open Meetings Law, however, needs to be improved upon.

Aggregate Results:

Cities and towns with 100% compliance in providing records through all three parts of the study:

Charlestown
East Providence
Westerly

Cities and towns that violated the Open Records Law for all record requests in the police and municipal legal claims section:

Coventry
Johnston
Newport
North Providence
Richmond
Smithfield
Warren
West Greenwich
West Warwick

Rates of response to written requests across governmental bodies were low:

City and Town Clerks: 20 out of 43 (46%) requests received no response
Police: 15 out of 35 (43%) requests received no response
Tax Assessors: 8 out of 29 (28%) requests received no response

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What We Found

Police

Overall (Note: This year's study cannot be quantitatively compared to last year's.)

Eight (22%) of the 37 police departments were fully compliant with each of our requests:

- Burrillville
- Charlestown
- East Providence
- Little Compton
- Middletown
- North Kingstown
- South Kingstown
- Westerly

Seventeen departments (46%) were never fully compliant, meaning that they never provided complete initial arrest reports, or in a few cases, they overcharged.

Several of these gave us some sort of document, but it did not fit the criteria of an initial arrest report.

Four departments provided no documents to any of the requests:

- Bristol
- Lincoln
- West Greenwich
- Woonsocket

Municipal Legal Claims

Twenty-one cases (29%) were either explicitly denied or referred to another department, then denied.

Twenty-nine requests (39%) were met with no response.

Tax assessors complied 48% of the time, and did not respond at all 28% of the time.

Clerks complied 21% of the time, and did not respond at all to 46% of the requests.

Results by Section

Police

Last year's *Access to Public Records* study found that police departments had poor compliance rates with the law. Many police chiefs criticized the report and promised to improve. In 1998, the General Assembly passed an amendment to the Open Records Law which clarified the public's right to obtain initial arrest reports. With the addition of this amendment, we felt that it was necessary to re-evaluate the police in this study.

Police were evaluated on whether or not they provided three specific initial arrest reports upon request. These reports are public under the Rhode Island Open Records Law. To be considered legally compliant, a department had to both provide the requested initial arrest report with the proper information and charge within the fifteen cents per page legal limit.

The police only met full legal compliance 37% of the time (40 out of 108 requests).

Most departments do not charge, but for ten requests (13%) we were charged more than the legal \$0.15 per page limit.

Municipal Legal Claims

The purpose of this section was to determine whether it is possible to obtain the financial terms of a settlement against a city or town. While the legal profession tends to promote confidentiality, the law clearly states that the financial terms of a settlement against a municipality are public.

Letters, rather than in person visits, were used to request these documents so that the requests were systematic and clear. These letters were sent by volunteers, not students, in order to better replicate an average citizen's request. The first round of letters was generally mailed to the tax assessor. The second letter was generally mailed to the city or town clerk.

Out of 73 lawsuits, settlement terms were provided in only 23 (32%) of these cases.

School Districts

Policies affecting children in the public school system should be, and legally are, available to the public. Additionally, a financial consideration exists for evaluating school districts since they consume a large portion of municipalities' tax revenues. School districts were evaluated on their compliance with both the Open

Records and Open Meetings Law through records requests and analysis of school committee minutes.

Open Records

We requested teacher evaluation and professional development policies because they are clearly open records, and because they are policies that parents and concerned citizens would consider important. Volunteers made phone calls to a local school, typically the city or town high school, and asked for a blank teacher evaluation forms and written policies on professional development.

Overall, out of the 61 documents requested in the study, 52 (85%) were received.

Open Meetings

In our preliminary research we collected and evaluated four to six months of school committee meetings minutes. We conducted interviews with the chairperson of each school committee. These two data sources were combined to evaluate the legal compliance of each committee with the Open Meetings Law, as well as the general openness and accessibility of each committee.

Twenty-three districts always cite the law correctly. Seven districts, always cite an adequate reason for recessing into executive session.

Only five cities and towns provided all of the financial information requested.

- Barrington
- Charlestown
- East Providence
- Narragansett
- Westerly

School Districts

The districts most compliant with the Open Records and Open Meetings Laws were:

- Barrington
- Burrillville
- Jamestown
- Tiverton

The least compliant districts were:

- Cranston
- Cumberland
- Scituate

Open Records

Twenty-five of the schools surveyed provided teacher evaluation forms, and two districts provided information on their evaluation procedures vocally.

Six districts did not provide any information in response to the requests for teacher evaluation forms.

Fifteen of the schools surveyed provided written policy information on professional development. There was significant variation in the quality of the documents, due to the fact there are no legal criteria for the policy.

Ten districts provided vocal information on professional development.

Three districts did not provide any information although each promised it, yet never sent it.

Open Meetings

Fifteen of the committees do not vote in executive session. Of the 17 that do vote, ten follow their obligation to disclose all votes in open session.