

# Public officials can still too easily avoid the Sunshine

Most citizens in the state watched Eric Greitens in his recent press conference as he resigned from the office of Governor. Many of those watching this historic event probably felt like it was the end of a long nightmare for the state. But there are hints there is more to come and the Greitens story isn't over.

Some of the outstanding issues relate to dark money and campaign finance issues. That's not of immediate concern, however, to the newspaper industry in general, although investigative reporters will no doubt be watching these developments closely. What does seem important, however, is the issue of the text-messaging software that was used not only by the former Governor and his aides, but also by a number of others in government recently.

It's hard to tell if we even have a clue as to the widespread use of such software. There have been hints that those even as high as the Presidential campaign staff may have been using such software. In the last year, it's been widely reported that even President Donald Trump's White House staff was using disappearing text software to communicate about scheduling matters.

In Missouri, the issue was of enough concern that State Rep. Gina Mitten, a St. Louis Democrat, introduced House Bill 1817, which would have banned the use of disappearing text messages.

Mitten's bill never even got a hearing in committee, despite the seemingly increased interest in transparency in the Missouri legislature this past session.

And when the issue came up in a court proceeding filed by two St. Louis County attorneys that accused the Governor and his staff of violating state open records laws by the use of that phone application, the Governor's defense attorneys argued that issuing a temporary injunction banning the app from the staff's phones constituted a violation of the employees' First Amendment rights.

One of the plaintiff-attorneys in the matter, Mark Pedroli, a co-founder of

a group called the Sunshine Project, called that argument a "breathtaking endorsement of the use of Confide and message shredding software in general." Pedroli said the defense attorneys were "actually advocating for the use and suggesting, incredibly, that government employees have a constitutional right to shred their communications with other government employees." That case is still pending in the court system.

Meanwhile, the National Freedom of Information Coalition (NFOIC) is looking at the issue on the national level. It has contacted Google about its Gmail program, which apparently has introduced a new "self-destructing" email feature. The concern is that government employees would be deleting public records subject to both federal and state open meetings laws. Google already has a professional suite of products based on its Gmail platform used widely among governmental entities, which is why the issue is so troublesome.

"Technology that allows the self-destruction of official, electronic public communications is not promoting transparency, and under most state open government laws, is illegal," reminded Mal Lear, NFOIC board president. That organization, mentioning the Missouri situation, also noted that in Kentucky, an amendment to an unrelated bill (subsequently removed from the bill) would have exempted communications conducted by public officials who use private email (either on phones or computers) from the state's public records law.

Amid the present strong push in our state for additional transparency in government, Missouri Press hopes legislators take this summer and fall to think about how legislation for next year's session could strengthen Missouri's Sunshine Law.

Attorney General Josh Hawley pointed out the need for subpoena power in his office. He advocated creation of an Office of Transparency, which could have power to investigate potential violations of the law while maintaining its separation from other parts of the A.G.'s office which must defend state agencies from such charges.

Additionally, the whole issue of the Confide app's use by governmental officials is crying to be addressed by leg-

islation next session, as well as other issues that remain in our state's open meetings/open records law.

You, our members, need to keep this concern in mind as you meet and greet your local legislators over the summer. Tell them about your concerns. Urge them strongly to work to support greater transparency in government. Remind them these bills need to be re-introduced next session and that you will be there to offer editorial support for them if they support these changes. They will listen to your call.

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