Record retention rules should be part of law

Still hoping for definition of 'knowing'

A few weeks ago I saw a short article in my hometown newspaper noting that the Chattanooga *Times Free Press* had surveyed area residents as to whether they believed government business, both state and local, was being done "on the sly." According to the report, a "significant majority" of Tennesseans believed this was true.

As I pondered what the results would be of such a survey in Missouri, I had no doubts but what residents in our state would agree. The year 2008 was certainly one in which the sunshine law played a prominent role.

I remember as the legislative session started last year, I could not imagine that the issue of access to records and meetings wouldn't play a starring role in the bills to be considered. Our governor was being hit with accusations that he was refusing to release emails. Demands for production of email public records were flying back and forth among various office holders on both sides of the party line faster than Santa's sleigh. Surely, I believed, THIS would be the year that we saw major changes in the law governing access to such records.

I was wrong. Indeed, we saw less interest within the legislature regarding measures to toughen up this law than in the past, if that is possible. (Oh, except for the fact that legislators were more than anxious to extend the sunset provisions on a few of the EXCEPTIONS to openness that were due to expire at the end of 2008. Excuse me, I almost forgot!)

And so once again it is time to begin the long process of moving bills through our state legislature. Rep. Tim Jones, who has championed our bills for several years and who is a strong supporter of sunshine law principles, has once again pre-filed a sunshine law bill that would make some changes in the law. Indeed, the changes in this bill are not dramatic ones – in the greater scheme of things, they are really smaller changes than I would push for, but they are needed to clarify issues that arise over and over again.

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Meanwhile, the fight within the Governor's Office goes on. Late in 2008, we heard that the state spent more than $1 million fighting the lawsuits that arose from this sunshine request for emails. I would venture a guess that this is a time when a record number of the state's residents are facing layoffs and needing help to meet their basic needs for food, shelter and medical care. Everyone is pointing fingers at everyone else in an effort to avoid liability for actions that are the subject of the various lawsuits.

But there are a number of issues that arise out of this litigation that will not be answered by the proposed bill Rep. Jones is sponsoring. One of those issues revolves around the problem of retention of records. In the original litigation involving the Governor's Office, one of the questions was how long officials in the Governor's Office are required to keep e-mails that come into the office. The Secretary of State's Office has prepared guidelines for this issue, which are a part of the state regulations. However, some of the actual time period instructions are not even contained within the state regulation – they are merely written suggestions available to officials who happen to dig that far in search of the answer.

Perhaps it is time these record retention provisions were put into state law. Why should we let any record that might be a historical artifact of state actions be destroyed so casually? I think it is time that this issue was addressed by state legislators and a formal policy mandated relating to retention. Included in this should be the issue of retention of e-mails that are received on state-owned Blackberry-type devices or on similar personal devices that are being used to communicate about state business. Every state office needs someone in that office in charge of addressing this issue and accounting for such records. That might help ensure that such records are not treated as casually as they have been.

And I cannot help but hope that before the litigation involving the Governor's Office is over, we get an appellate court decision that gives us a hard definition of the term "knowing" in the sunshine law and additional information on the Courts' interpretation of the term "purposely." It was a mistake to let those words get into the law without a definition. This is particularly true in regard to the term "knowing," which was added without any definition. (We've had a Missouri Supreme Court interpretation of the term "purposely" for several years which uses the word "knowingly" as a substitute. But if those two words are equal, according to the Missouri Supreme Court, what does that mean in terms of the current law, which uses the word "knowingly" as something less than "purposely.)

If, indeed, the public believes government operates far too frequently in secret, then why aren't our legislators demanding laws to ensure that this doesn't happen? It's time for the public to speak up and let their voices be heard. We should demand more of those who represent our interests. We need to pay attention to what our public officials are doing to ensure that the laws that are on the books are being honored. And we need to demand more accountability from public officials for the acts they take.