

Sunshine law gets ‘F’ in ranking of all states



FOI Coalition helped with national study

By JEAN MANEKE
MPA Legal Consultant



(Jean Maneke, MPA's Legal Hotline attorney, can be reached at (816) 753-9000; jmaneke@manekelaw.com.)

How does Missouri's sunshine law stack up against the sunshine laws of other states? That's a question I am asked frequently by reporters who come from other states to work in Missouri. And as we discuss the comparative laws, my position has always been that Missouri had a pretty good sunshine law, relatively speaking.

But that wasn't the conclusion reached by the Better Government Association, which, working with the National Freedom of Information Coalition, recently ranked freedom of information laws in the 50 states. Missouri received an "F" from this group in terms of the status of its law. To our credit, we didn't stand alone in that group. Thirty-seven other states were on an equal footing with Missouri.

The survey is available at <http://nfoic.org/news/bag/overview.html>. MPA friend, Charles Davis, who serves as executive director of the National Freedom of Information Coalition, based at the University of Missouri School of Journalism, concluded "this national study shows that in the vast majority of states, citizens have little to no recourse when faced with unlawful denial of access under their states' FOI laws. It's a cry for reform of FOI laws nationwide."

Only Nebraska and New Jersey ranked well in the survey, receiving 14 of the possible 16 points. Twelve other states received grades of C or D.

Echoing Davis was Jay Stewart, the executive director of the Better Government Association, who suggested, "Just as states compete amongst each other to be the best in education, business environment and tax policy, the states should compete to be the best in responding to citizen's requests for public information, information they pay for with their tax dollars."

The study investigated how each state's law measured against certain criteria, including procedural aspects such as response time, appeals and expedited review, and penalty criteria, including attorney fees and costs and sanctions.

In assessing response time, the study investigated whether states did actually respond within the statutory time (in Missouri three business days). Our state actually ranked very high in that category, collecting all four points.

But when the study looked at the process for appealing from the denial of access, our state began falling short of the standard. Our state offers no choice on the appeals process, mandating that the only appeal process available is to go to the court system, rather than having any administrative process available. States that received all of the points available offer citizens both the ability to appeal a denial of access to the agency's director and then to an ombudsman before having to go to court. Missouri received only one-half of a point in this category.

The third area of study related to the review process. The study looked for an expedited review, meaning such matters proceeded to the top of a court's docket due to time concerns. Some states, which require a case to be heard within 10 days, received the full number of possible points. Missouri received no points, because it has no means of expediting such matters in the court system.

The category of attorney fees and costs questioned whether state law mandates that plaintiffs in records cases are entitled to an award of attorney fees and costs when they prevail in such actions. States that mandate an award of such fees and costs received more points than those that made such awards discretionary. Again, Missouri's law fell far short of the gold standard, receiving only one of four possible points.

Finally, the study looked at possible sanctions for violations of the open meetings law. The study gave higher