

Testimony of
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Good morning and thank you for inviting me to talk to you about the Freedom of Information Act and the needed reforms to protect our First Amendment rights. I am Sabina Haskell and I am the editor of the Brattleboro Reformer, a newspaper 10,000 circulation located in southeastern Vermont.

Even at that small size, we're the third largest newspaper in Vermont. And we're in good company: about 85 percent of the daily newspapers in the United States have circulations of 50,000 or less. Smaller newspapers generally pursue public records from state and local officials, rather than from federal sources, but our daily efforts to do so are a quagmire and it's getting worse.

In Vermont, where I am also president of the Vermont Press Association, we're frustrated by the de facto sentiment of secrecy that seems to be seeping down to every level of government - and it begins at the top, where it appears the Bush administration is unilaterally stripping Americans of their Constitutional rights.

The most recent example of the need for the Freedom of Information Act came only last week, when the inspector general released a report revealing that the FBI had improperly used the USA Patriot Act to obtain information about people and businesses. It was through the efforts of Sen. Leahy and others that the Freedom of Information Act was amended last year, making it possible to obtain the records needed to expose the wrongdoing at the bureau.

The fear-mongering espoused at the federal level - where questions and requests for information are viewed as suspect - is replayed time and time again at state and local levels. I truly believe the effort to seal off the federal government is the primary reason that there is increased efforts to close the doors on transparent government at the local and state levels.

The anecdotes I will share come from the dozen dailies and more than four dozen non-dailies that are members of the Vermont Press Association. Multiply us in Vermont by all 50 states and almost 1,500 newspapers and you can understand the magnitude of the problem.

The Freedom of Information Act is supposed to allow any person -- individual, corporate, and regardless of citizenship -- to request without explanation or justification, access to existing, identifiable executive branch agency records of any topic. Requesters are supposed to get timely answers at little or no cost.

But when we wanted a copy of the Brattleboro police chief's contract and a record of the days he's away from his job, we were rebuffed. We were asked: Why did we want that information?

What were we going to do with it? We were told the information would be provided when we answered their questions. We still don't have the documents.

In northeastern Vermont, a weekly newspaper wanted to do a story on the town hall's new handicapped-accessible ramp, paid for, in part, by federal grant money. It was supposed to be a nice, feel-good story about disabled people having better access to their local town hall.

But when the paper requested an architect's drawing of the exterior wooden ramp to illustrate the story, the newspaper was denied because of Homeland Security concerns. It's hard to understand how a wooden ramp and railings, built of pressure-treated lumber, could be viewed as a security risk. You could wait six months, drive by and then snap the picture.

In Winooski, the school board went behind closed doors to make a sweetheart deal to buy out the embattled superintendent's contract. The Burlington Free Press sued to get the details of the settlement and when the newspaper finally won 18 months later and was given the documents, the school district's attorney's response was, "You don't think we lost, do you?" By stalling, the school district and its lawyer kept running up the legal bill on the taxpayers, knowing full well it was all public information, but hoping some of the storm would subside by the time they agreed to follow the law and release the information.

In Jamaica, Vermont, a town official, requested the public documents about the sheriff's department:

? copies of timesheets for the sheriff, a deputy and a detective.

? records showing reimbursed or partially reimbursed expenses incurred by the three

? timesheets and other records that would identify the "whereabouts and activities" of the three for three days in January 2004.

Two of the three requests were denied under subsections of Vermont public records law. The third request was denied because the sheriff was "unable to recall any instance" in which the three incurred a business expense that was reimbursed by the department.

The attorney for the sheriff's department then intimidated this local official, reminding him that there would be a 45 cent charge for every minute in excess of a half-hour the bookkeeper spends searching for responsive documents.

The sheriff was later found to be misappropriating money; she resigned in disgrace and was subsequently convicted.

The town official's assessment: "So -- I'm kept from a public record. I take the matter to court on my own dime, and I get falsified information back. Who picks up the tab? Me."

Keeping bad news - mistakes out of the public eye may work in the short-term - but the long-term outcome is the ever-increasing mistrust of government and politicians.

A survey conducted by the American Society of Newspaper Editors confirms this: More than two-thirds of Americans polled said the federal government is "somewhat secretive" or "very

secretive." People overwhelmingly believe their federal leaders have become sneaky, listening to telephone conversations or opening private mail without getting court permission, the study found.

In fact, the Coalition of Journalists for Open Government has found that the backlog of requests continues to grow. Its latest research found that an all-time record of 31 percent of requests went unprocessed in 2005 - up 138 percent in seven years. More important was the finding that half of the 26 federal agencies in the study said they failed to comply with even simple requests within the federally mandated 20 days.

The Freedom of Information Act is clear in its charge: We are a country where we do the people's business. And the people have a right to know what local, state and federal officials doing.

FOIA allows but nine exemptions in considering whether a record is open or not. Federal agencies are mandated to reply within 20 days to a request for documents.

But stall tactics and legal costs to challenge officials' decisions effectively closes the doors to government. Requesters are treated as guilty until proven innocent.

In Vermont, a legislative study last summer found that our open government laws have been rewritten and amended to allow 207 exemptions and counting. Like the federal law, Vermont has provisions to reimburse requesters for their costs to obtain the public documents. Like the federal law, those penalties are rarely enforced.

State law, like the federal act, speaks to mandates but enforcement is lax. The Vermont attorney general believes his job is to defend the state officials breaking the law, not protect the citizens who own the public records.

The amendments proposed by Sens. Leahy and Cornyn in S. 394 and in those proposed in the House, under H.R. 1309, are needed and should be passed.

Starting with the premise that records should be considered public, the amendments would strengthen the Freedom of Information Act requiring these safeguards:

- ? Enforcing the 20-day statutory clock on FOIA requests
- ? Imposing consequences on agencies that do not respond in a timely manner
- ? Tracking requests with individualized case numbers and providing telephone and internet access to the status of such requests
- ? Strengthening reporting requirements, which would identify excessive delays
- ? Creating a FOIA ombudsman to mediate problems with requests without resorting to litigation
- ? Making it easier for requesters to recoup costs for successful FOIA challenges
- ? Holding agencies accountable for their decisions by giving the Office of Special Counsel the ability to take disciplinary action against officials who deny disclosure

These amendments will go a long way to enhancing the Freedom of Information Act and will set higher standard of conduct for state and local officials to follow.