



Justices postpone vote on proposed rules for court records

By David Marburger, Baker & Hostetler

A committee of judges has decided to postpone its vote on whether to recommend that the Ohio Supreme Court adopt proposed rules that would give the state's highest court unprecedented authority to decide which court records are open to the public when filed in lawsuits.

Chair of the committee, Ohio Supreme Court Justice Judith Lanziger, announced that the committee postponed its vote because of a comprehensive analysis criticizing the proposal filed by 16 news and press organizations, including OCOG. Lanziger also cited objections from the Ohio League of Women Voters.

Chief Justice Thomas Moyer appointed the committee to propose rules that would direct all Ohio courts in deciding which records filed in court cases would be available to the public electronically via court Web sites. In crafting those proposals, the

committee expanded its role to propose rules that directed all Ohio courts in opening or closing court records even at the courthouse.

The proposed rules had two chief components. One was to direct all Ohio courts to close specific court records based on their content. For example, the proposals would require Ohio judges to seal all court records that identify a crime victim younger than age 18, and all medical and psychological evaluations. So even if a 17-year-old crime victim is the accusing witness in a criminal prosecution or the plaintiff in a civil damages suit, the proposed rules would bar the public from seeing court records that identify the 17-year-old. That was one of the objections that the news organizations lodged.

The second chief component of the proposed rules would be to direct Ohio courts to close other records by applying criteria

listed in the proposals. The proposed criteria favored closing a court record where the person seeking access to it could get the same information somewhere else. Where someone wants to see a court record that a judge already has sealed, the proposals did not require anyone to show a continuing need to keep the record under seal, but instead deferred to the judge's original decision to close the record.

In objecting to the proposed criteria, the news organizations argued that they departed from long-established law, which places a heavy burden on those who wish to close court records and on those who wish to uphold an older order that already closed court records.

The news organizations' chief argument, *(see Court Rules page 7)*

Public records, Internet study committee issues report

The Ohio Privacy & Public Records Access Study Committee, a group charged with recommending the best ways to protect personal information while distributing public records online, concluded a yearlong series of hearings and issued its final report in October of 2007.

The report states that government offices should further expand access to public records by continuing to post them on the Internet. However, in an approach similar to provisions in the current Senate Bill 6, the report states that custodians should redact Social Security numbers and other personal information.

Rep. Larry Wolpert (R-Hilliard) who co-chaired the committee, said "At this point we wanted to have high-level philosophy recommendations and hopefully legislators will take that as guidance when they're crafting legislation on these matters." He added, "The philosophy is very important, as we want to make sure we don't put restrictions

on public records."

At the urging of the Ohio Newspaper Association and other organizations representing commercial users of public records, Wolpert authored the original legislation that created the study committee. Its purpose was to develop a unified approach to online public records while addressing such issues as identity theft, fraud and other security matters.

The 23-member study committee included four legislators, media representatives, local and state government representatives, business executives and commercial users. Co-chairing with Wolpert was Sen. David Goodman (R-New Albany). Hearings were held on a monthly basis and began in June 2006. Among the major recommendations in the final report are the following:

- Government agencies should seek to maintain, and not restrict, broad access to public records

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Senate Bill 6 tackles identity theft

After many months of interested party meetings, Sen. Tom Niehaus (R-New Richmond) succeeded in moving SB 6 through a Senate floor vote last October. The bill is an omnibus approach to combating identity theft and includes several provisions related to public records. The bill has been assigned to the House Committee on Financial Institutions, Real Estate & Securities.

Besides spelling out a procedure for victims of identity theft to “freeze” and “thaw” their credit reports, the bill includes these provisions:

- Requires public offices, that make records available to the public through the Internet, to redact Social Security numbers, drivers’ license and state ID numbers, federal tax ID numbers, checking account numbers, savings account numbers and credit card numbers

- Requires the Office of Information & Technology to establish security policies and procedures to safeguard personal information maintained and destroyed by state agencies and to hire a Chief Privacy Officer, who would be responsible for implementing security policies and procedures, as well as coordinating implementation in all state agencies

- Specifies that public offices are required to maintain a database or list that includes the names and dates of birth of public officials and employees, stipulating that database or list is a public record.

- Gives the Secretary of State the authority to refuse documents with Social Security numbers. This is similar to authority given to county recorders in legislation adopted by the previous General Assembly.

Did court Web site violate Constitutional right to privacy?

By David Marburger, Baker & Hostetler

In a case that appears to be the first of its kind in the nation, the federal court of appeals in Cincinnati will decide whether Hamilton County violated the constitutional right to privacy by routinely posting court records on its Web site because it led to identity theft.

The court will decide whether to reverse a federal judge’s dismissal of a Hamilton County woman’s suit against the county after an identity thief lifted the woman’s name, Social Security number, signature, address, birth date, and driver’s license number from a traffic ticket posted on the Hamilton County clerk’s office Web site.

About a year after police cited Cynthia Lambert for speeding, she received a call from a Sam’s Club store to verify a large purchase being made by a woman claiming to be Lambert. Using a fake driver’s license bearing Lambert’s identifying information, the woman bought over \$8,000 in electronic equipment. The next day, Lambert got a call from a Home Depot store about a credit card account that was being opened in Lambert’s name with which the pretender was buying \$12,000 of goods. Police later arrested the woman.

Lambert then sued the county for posting her personal identifying information on its court-records Web site, claiming that the county clerk’s office violated her constitutional right to privacy in information. U.S. District Judge Michael H. Watson, sitting in Cincinnati, granted the county’s motion to dismiss Lambert’s suit, saying that he sympathized with Lambert but that her claim belonged in state court, not federal court. He ruled that the federal constitutional right to privacy in information, a barely developed area of federal law, doesn’t extend to barring state courts from posting public court records on their Web sites -- at least where the potential harm is limited to identity theft and not potential physical harm.

Hamilton County was the first Ohio county to post virtually all records filed in court on its Web site. At one time the county had about 6 million records posted on its site. After Lambert sued, Hamilton County Clerk Greg Hartmann blocked routine public access to its court records via the internet, and decided to provide remote public access to traffic tickets.

Blade, Seneca County in arbitration

The Blade and Seneca County commissioners have agreed to a court request to try to resolve their public records dispute over e-mails in which commissioners privately discussed the fate of their 1884 county courthouse. On Nov. 14 the Ohio Supreme Court formally referred the case to mediation.

Mark Troutman, the commissioners' attorney, said that, given the fact that a local lawsuit filed by preservationists seeking to save the courthouse has been placed on hold, "we thought it was time to lay down our swords and see what

can be resolved."

The commissioners have agreed to do nothing irrevocable with the building before April 30, giving the state time to investigate funding for courthouse restoration as an alternative to the demolition the commissioners approved.

The Blade's lawsuit asks the court to force the commissioners to produce all e-mails sent, received or deleted since Jan. 1, 2006. The county initially provided some e-mails. After the newspaper sued, some 700 pages of additional e-mails were produced.

Seneca County commissioners change meeting policy

With two lawsuits pending that claim Seneca County commissioners violated Ohio's Sunshine Law and the ongoing controversy over demolition of a historic courthouse, the commissioners Oct. 11 agreed the public could address the board before it adjourned its meeting.

Commissioner Mike Bridinger suggested the change in procedure, saying it was his goal to be "open and transparent."

"We adjourn and then we let the public speak," he said. "I would rather that be-

fore we adjourn, we let the public speak."

Commissioner Ben Nutter said he had no problem with that, although he asked that members of the public who address

Commissioner Mike Bridinger suggested the change in procedure, saying it was his goal to be "open and transparent."

the board do so with legitimate questions and concerns and avoid personal attacks.

Nutter said the prior policy had been in place when minutes of meetings were written out and it was too cumbersome to transcribe everyone's comments. Now the meetings are recorded on digital video discs.

Dispatch series leads to online teacher database

From The Associated Press

A new state Web site listing 1,700 educators who were reprimanded for misconduct, including cases in which teachers physically or sexually abused students, is intended to make classrooms safer, education officials said. The Ohio Department of Education posted the database Nov. 1, naming teachers, coaches, administrators and other licensed educators who were investigated and reprimanded by state officials. The "Educator Conduct Search" can be found near the bottom of the Education Department's Web site at www.ode.state.oh.us.

The state had promised to create the Web site after The Columbus Dispatch published a series of stories last month, documenting widespread disciplinary

problems, including abuse of children, assault and theft, among working teachers and that the information was not easily available to the public.

The Dispatch also reported that ODE did not always notify school districts about reprimanded teachers, so some superintendents had unknowingly hired teachers with histories of misconduct.

Ohio education officials crafted the Web site after reviewing online information on teacher misconduct released by Florida, South Carolina and Vermont. Those three states provide more detail about a teacher's misconduct than the Ohio Web site does.

Superintendent Susan Zelman says the Ohio site is a "work in progress" and will be enhanced.

Portage judge refuses release of public record

From The Plain Dealer, Cleveland

A Portage County Municipal judge already under state scrutiny for his courtroom conduct is now refusing to surrender a public record.

The (Cleveland) Plain Dealer repeatedly requested the record of John Plough's sentencing of a woman who pleaded guilty to assault and disorderly conduct in late July.

Plough placed Angela Porter on probation then and hired her a month later. She now works as his assignment commissioner and deputy bailiff for \$12.75 an hour.

The judge refused a reporter's request for the record in late August, ignored a letter from the newspaper's legal counsel and has not returned repeated phone calls.

Plough's records take the form of sound recordings that stenographers transcribe. By law, the record is public and should be available on demand.

This comes on the heels of a county common pleas judge complaining to the Ohio Supreme Court in May that Plough is "making a mockery of justice." The judge also accused Plough of keeping incomplete records of his proceedings.

The high court has yet to issue any public findings or take action against the judge.

Common Pleas Judge Laurie Pittman told the Supreme Court in May that Plough maintains records of proceedings on a recording device "which he turns off and on at his discretion."

Court reporters for the county's two other Municipal judges have confirmed that they are reluctant to transcribe Plough's recordings or certify their accuracy because there are so many apparent gaps. Plough chose not to have a stenographer of his own.

Dennis Lager, the Portage County public defender, said his office is having difficulty getting records from Plough's court for three appeals.

One audiotape was so garbled that no record could be transcribed.

Lorain County Juvenile Court limits photos of 16-year-old

Lorain County Juvenile Court officials limited public access to the Daniel Petric hearing Oct. 22, barring pictures of the 16-year-old's face.

Reporters and an attorney for the Chronicle-Telegram in Elyria requested a hearing to get full access based on a September Ohio Supreme Court decision that said juvenile judges must provide a hear-

ing about access issues before the child's court appearance.

County court officials said there wasn't time for a hearing. The court instead allowed one photographer in the hearing to photograph only the back of Daniel's head. A picture in The Plain Dealer, Cleveland, was supplied by the Chronicle-Telegram.

"We were not able to get this entirely resolved," Chronicle-Telegram Editor Andy Young said. Young said the Juvenile Court has limited photographers' access in the past.

Plain Dealer Editor Susan Goldberg said Oct. 31 the Plain Dealer and Chronicle-Telegram have since been given permission to take photos of Petric's face.

Legally Speaking: Judges' right to block photos during juvenile court cases

By Lou Colombo, Baker & Hostetler

In a recent decision, *State ex rel. Dispatch Printing Co. v. Geer*, 114 Ohio St. 3d 511 (2007), the Ohio Supreme Court extended three earlier rulings on access to juvenile proceedings to the issue of photographing a juvenile in court. The decision, however, raises the specter of potential future juvenile court issues involving photography.

In 1990, the Ohio Supreme Court ruled in the case of *In Re T.R.*, 52 Ohio St. 3d 6 (1990) that juvenile proceedings involving abuse, neglect, dependency or custody could be closed to the public only if the juvenile court found that there was (1) a "reasonable and substantial basis for believing that public access would harm the child or endanger the fairness of the adjudication," and (2) that the "potential for harm" outweighed the benefits of public access.

A few years later, in *State ex rel. Dispatch Printing Co. v. Lias*, 68 Ohio St. 3d 497 (1994), the Court added the additional condition that the juvenile court must find that "there are no reasonable alternatives to closure." The Court also made clear that any closure had to be based on actual evidence, and that the closure hearing itself had to be conducted in open court. The court added that if anyone wanted the closure hearing itself closed, counsel for all interested parties still were entitled to attend and participate in the closed hearing to determine if the adjudication proceeding itself should be closed.

In 2000, the Ohio Supreme Court addressed juvenile court closure in the context of a delinquency proceeding in the case of *State ex rel. Plain Dealer Publish-*

ing Co. v. Geauga County Court of Common Pleas, 90 Ohio St. 3d 79 (2000), noting that the argument for closure is less compelling in delinquency cases because they are more akin to criminal proceedings than abuse, neglect, dependency or custody proceedings. The Court reiterated the need for an evidentiary hearing, and expressly rejected the notion the judge could issue a closure order based solely upon the contentions of counsel or the "personal predilections of the judge." The Court also made clear that the burden of proof is on the party seeking closure to justify that the proceeding should be closed.

Against this backdrop, the Court decided the *Geer* case. In that case, the Dispatch had requested an opportunity to take photographs during a delinquency hearing. The juvenile court had granted the request. At the hearing, however, the judge asked if anyone had an objection to the presence of the newspaper. The parents of the juvenile objected to photographs of him, and the court, over objection by the newspaper, entered an order forbidding any photographs of the juvenile's face. There was no evidentiary hearing, and no findings made. The Dispatch filed an action in the Supreme Court challenging this restriction. The Supreme Court agreed that the restriction was imposed improperly.

The Court observed that Superintendence Rule 12(A) requires a court to allow photographs of proceedings conducted in open court, with certain exceptions. One of those exceptions, Sup. R. 12(C), is that victims and witnesses can be advised of their right to object to being photographed. The Court noted that

there was no evidence in the case to support the assertion that the juvenile had testified as a witness at the hearing, so Sup. R. 12(C) did not apply. Moreover, there was no evidence introduced to support a restriction on photos, nor was there an opportunity afforded to all interested parties to respond, hence the ruling of the juvenile court was improper.

This case logically extends the Court's prior decisions restricting the right to close a juvenile proceeding and applies those decisions to efforts to restrict photographs of a juvenile at an open proceeding. It requires a party seeking to restrict photographic coverage to make a timely application, produce evidence, and give opposing interested parties an opportunity to respond. All of this is good.

There are, however, a couple of disquieting notes in the opinion. First, the Court appears to assume that a juvenile court can override the Rules of Superintendence to limit photographing of an alleged delinquent in a courtroom. Presumably, the Court views the power to exclude the public as subsuming within it the power to prohibit photographs. However, it is not at all clear that this logically follows. There is nothing inherently illogical about a rule that says a court may exclude the public from a juvenile proceeding if certain stringent standards are met; but that, if those standards are not met, the proceedings are subject to the same rules as any other public judicial proceeding, including the rules governing photographs. The Court seems to have assumed, without deciding, that this is not necessarily the case.

(see **Photos** page 6)

Video of judge's OVI arrest released

From The Vindicator, Youngstown

A video recorded by a Ohio State Highway Patrol trooper of a retired judge's OVI arrest is public after the court initially halted its release pending a hearing.

A lawyer representing Maureen Cronin was successful in temporarily blocking release of the video, which was shot late Sept. 5 near Youngstown.

Judge Scott D. Hunter, assigned to Mahoning County Area Court in Canfield, granted a motion filed by Youngstown attorney Scott R. Cochran to halt release of the video pending a hearing.

Cochran, in his motion to withhold the

tape, said Cronin has a right to a jury pool that has not been "tainted with prior knowledge of the evidence in the cast." He requested two weeks to prepare briefs to support his argument.

Cleveland attorney David Marburger, representing The (Youngstown) Vindicator and WFMJ-TV 21, filed a motion Sept. 7 in Canfield court asking the judge to vacate his order barring release of the video. Marburger said the order withholding the tape, a public record, has no lawful foundation.

The issue became moot after Cronin pleaded guilty to OVI. The patrol made the videotape available Sept. 13.

Dann backs limits on gun-permit data

**By Jim Provance,
Columbus Bureau Chief, The Blade**

Ohio Attorney General Marc Dann sided with law enforcement and concealed-carry gun advocates in his recent opinion prohibiting journalists from writing down, or in any way recording the names of gun owners kept by county sheriffs.

Ohio law allows reporters to inspect records of concealed-carry permit holders but prohibits them from obtaining copies of the records.

The attorney general's opinion stated the ban on copying the records extends to a journalist walking out of a county sheriff's office with anything than what he's committed to memory.

The legal opinion by the state's top law enforcement officer was recently issued after a request by the Trumbull County prosecutor for clarification of last year's change in the state's public records law to prevent a reporter from copying data on the issuance of permits to carry hidden handguns.

"Because the only actions a journalist may take with respect to the names, counties of residence, and dates of birth described in the law is to see such information, we read the prohibition against a journalist's copying such information as applying to the reproduction of the viewed information by any means, including those you specifically mention -- hand-copying, handwritten notes, and dictation," Dann wrote in a letter to the prosecutor.

"I think a litigator is going to have a won-

derful time challenging this," said David Goldberger, professor at the Ohio State University College of Law and a specialist in the First Amendment. "They're trying to prevent publication by preventing a reporter from recording or summarizing on a piece of paper," he said. "They say it can be published, but you can't separate that from the fact that once a reporter has information that's been lawfully gathered with his or her eyes, it can't be written down in readable form. They're trying to have it both ways."

Bob Cornwell, executive director of the Buckeye Sheriffs Association, said the opinion clears up much of the confusion surrounding the law.

"The sheriffs will have somebody stationed with the journalist to make sure all goes as it should," he said. When asked whether a reporter could repeatedly walk into the room to read some information and then out to make notes or pass the information along, he said, "I would imagine they could, but it would become pretty obvious after the second or third trip what was being done. The sheriff may stop it at that point as violating the spirit of the law."

The provision narrowing the journalist exception for permit records was added to HB 9, a reform of the Ohio Public Records Act. Frank Deaner, ONA executive director, said "I think this comes down to sloppy 11th-hour bill-writing. It's a semantic problem between 'photocopying' and 'taking notes.' A journalist's tools always include taking notes."

Judge reaffirms journalist access to concealed-carry records

Erie County Common Pleas Court Judge Tygh Tone has dismissed a complaint from the Erie County sheriff, in effect affirming that the sheriff must provide journalist access to a list of concealed-carry permit holders in the county. In the June 4 ruling, the judge granted a motion of dismissal that had been filed on behalf of Cincinnati Enquirer reporter Greg Korte by John Greiner, attorney for the Enquirer.

Sheriff Terry Lyons filed the original complaint, claiming that a request for the list runs counter to the section of the law that mandates destruction of records used to check the backgrounds of applicants. Lyons also asserted that the statute does not adequately define a journalist, thus making the sheriff liable if the list were released to someone claiming to be a journalist.

Current law stipulates that a journalist may access a list of permit holders that includes names, dates of birth and county of residence. The statute defines a journalist and further requires that the request must be in writing with the name and business affiliation of the journalist.

In his written opinion, Judge Tone stated, "Nothing in this statutory provision prohibits any sheriff from maintaining a list of persons to whom he has issued a license to conceal a firearm." In referring to the journalist definition, the judge added, "The statute makes plain those who can receive the requested information."

Sheriff Lyons had filed his complaint following requests for the list by Korte and by Jeff Garvas, president of Ohioans for Concealed Carry.

Reacting to the judge's ruling, Greiner said, "There is really good language here. The opinion really tracks the briefs that we submitted."

Enquirer suit seeks access to foster parent database

The Ohio Supreme Court will decide whether the press and the public have a right to see the names and addresses of foster parents certified by the state.

The Cincinnati Enquirer has sued the Ohio Department of Job and Family Services after it denied reporter Greg Korte's request for the names and addresses of all certified foster parents in Ohio.

The state has certified about 10,000 sets of parents to be foster parents, about 80% of which have foster children. Foster parents receive money from county agencies or from private child placement agencies reimbursing them for the costs of raising foster children.

Pointing to a state law that makes confidential the names of people who receive "public assistance," the state argues that the money paid to foster parents is, in effect, a public assistance program. Therefore, the state law concealing the names of public assistance recipients applies, the state claims.

The state also claims that federal law bars public access to the names of foster parents. The federal Social Security laws condition federal funds for foster care programs upon the states limiting disclosure of "information concerning applicants and recipients" of those funds.

The state argues that disclosing the names and locations of foster parents will

put the foster children and parents at risk from the children's biological parents. The state cited several examples of abusive biological parents tracing their children to the foster homes in which government agencies placed them, and abducting them while threatening to shoot or injure the foster parents.

At one point during Jan. 8 oral arguments, Chief Justice Thomas Moyer questioned Henry Appel, an assistant attorney general representing ODJFS:

Moyer: "But the (newspaper) argues that can be taken care of by appropriate security measures, and that in fact the department encourages contact between the natural parent where it's appropriate and the foster child, isn't that right?"

Appel: "That's correct."

Moyer: "So that information is pretty available. For most children there's no secret who the foster parent is and who the foster child is, is there?"

Appel: "That's partly correct and partly incorrect. It is correct that in the majority of cases the biological parent would know, but the public at large is not allowed to know."

John Greiner, attorney for the Enquirer, told the court in response that ODJFS manuals minimize the safety risk to potential foster parents, and encourage interaction with biological parents.

Justices have taken the matter under advisement without indicating when they might rule on the request for access.

Enquirer suit for DUI records dismissed

The Ohio Supreme Court has dismissed the Cincinnati Enquirer's suit to obtain from the Ohio Bureau of Motor Vehicles a list of "all Ohioans convicted of drunk driving offenses, by name." The bureau moved to dismiss the suit, which the court granted in late 2007. The court issued no opinion and didn't explain why it granted the bureau's motion.

Photos *(Continued from page 4)*

Additionally, the opinion appears to suggest that a juvenile who testifies as a "witness" in a delinquency proceeding may have the right to invoke Sup. R. 12(C) to object to being photographed. If the Court were to limit its ruling to photographs taken while the delinquent was actually testifying, this might make sense. If not, the Court creates an anomalous situation in which an alleged delinquent who does not testify in open court can generally be photographed, while one who does testify cannot.

Presumably, if this issue were ever presented to the Court, it would either rule that Sup. R. 12(C) applies only when the delinquent is testifying as a "witness," and not when he is sitting in the courtroom; or that the provisions of Sup. R. 12(C) do not apply to the alleged delinquent, who occupies a separate status that of a "witness." In any event, there is in the opinion a hint that a juvenile may have a separate right under the Superintendence Rules to avoid being photographed even if he cannot meet the tests set forth in the *In Re T.R.* line of cases.

The next, inevitable dispute with a juvenile judge may well focus on one of these issues.

Legislature also faced with foster parent issue

Even as the Supreme Court's justices wrestle with the question of releasing foster parent records, legislators are being asked to adopt a sweeping public records exemption for records of foster parents.

House Bill 214 is among a package of four bills introduced last year, following the death of 3-year-old Marcus Fiesel and the conviction of his foster parents.

The legislative package includes several reforms in the procedure for checking the backgrounds of prospective foster parents. HB 214 also includes a public records exemption that would bar release of the names and all records related to foster parents who are licensed through the Ohio Department of Job and

Family Services.

Because of opposition from the Ohio Newspaper Association, Rep. Jeff Wagner (R-Sycamore), the bill's sponsor, dropped the exemption when the bill was up for a vote in a House committee last fall. However, he offered the same exemption as a floor amendment which passed on a narrow 52-44 vote.

Wagner has rejected a compromise offered by the Ohio Newspaper Association which would stipulate that only the names of foster parents and dates of placements and removals of children would be public record.

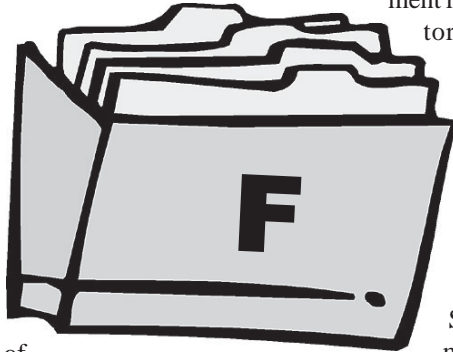
The bill is currently being heard in the Senate Committee on Health, Human Services & Aging.

Ohio's public records grade is an 'F'

Ohio is among 38 states receiving a failing grade of "F" according to a recent study of responsiveness to public records requests. The comprehensive review of the 50 states was conducted by the National Freedom of Information Coalition and the Better Government Association.

Nebraska and New Jersey topped the list with scores of 78%, while only ten other states had passing grades of 60% or better on a scale of 100%. Ohio tied with North Carolina for 40th position with a score of 34%

BGA used five criteria to assess each state. The criteria were chosen in an effort to conduct an objective analysis of the law in each state. The procedural criteria were: (1) amount of time a public agency has to respond to a citizen's request for a public document; (2) the process a citizen must go through to appeal



the decision of an agency to deny the request for the public record; and (3) whether an appeal is expedited when it reaches the court system.

Two additional "penalty" criteria weighed: (1) whether the complaining party, upon receiving a favorable judgment in court, is awarded attorney fees and costs;

and (2) whether the agency that has wrongfully withheld a record is subject to any civil or criminal punishment.

The study was conducted before the Sept. 29, 2007, enactment of HB 9 in Ohio,

an extensive reform of the Public Records Act that establishes penalties for public offices that wrongfully withhold public documents and more certainty in awarding of attorney fees and costs to prevailing plaintiffs.

Complete details of the study are available at www.nfoic.org/news/bga/overview.html.

League of Women Voters offers new resource

The national chapter of the League of Women Voters has published a new resource guide called "Observing Your Government in Action: Protecting Your Right to Know."

Free copies of this how-to resource guide can be downloaded from www.lwv.org.

Observing Your Government is part of the League's Citizen Initiative on Transparency and offers tips for promoting transparency and observing government activities.

The Citizen Initiative on Transparency was formed by the League of Women Voters Education Fund in the wake of the 2005 Local Voices project. The project examined the balance between homeland security and civil liberties.

For questions or comments about Observing Your Government or other League of Women Voters initiatives e-mail lwv@lwv.org or call (202) 492-1965.

Court Rules

(Continued from page 1)

however, is that the Ohio Supreme Court has no power to adopt rules that direct courts to open or close court records. Most of the news organizations' 33-page analysis attacked the court's authority to adopt the proposed rules. They relied on the constitutional doctrine of separation of powers.

Separation-of-powers confines each branch of government to using only certain kinds of government power. It bars, for example, the legislature from deciding court cases, and it bars the courts from enacting statutes.

The news organizations argued that separation-of-powers bars the state legislature from using the Public Records Act to control which records should be closed to the public when filed in lawsuits over which individual judges preside. But, they argued, separation-of-powers also bars the Ohio Supreme Court from adopt-

ing rules that function as its own version of the Public Records Act.

Ultimately, only individual judges can decide on a case-by-case basis which court records are open or closed, applying the judicial precedents governing the public's common law and constitutional rights of access to court records, the news organizations explained.

The Plain Dealer spearheaded the coalition of news organizations, joined by The Toledo Blade, The Cincinnati Enquirer, The Columbus Dispatch, The AP, The Dayton Daily News, The Akron Beacon Journal, The Canton Repository, E.W. Scripps' television stations WCPO in Cincinnati and WEWS in Cleveland, The Youngstown Vindicator, Dix Communications, WKYC-TV in Cleveland, WFMJ-TV in Youngstown, the Ohio Association of Broadcasters, and the Ohio Newspaper Association.

Report

(Continued from page 1)

- Electronic communications and other communications through new technologies used in the course of public business should be treated consistently under existing public records laws and court decisions

- Government agencies should further seek to expand access to public records by making them easily accessible to the general public on the Internet, as long as appropriate steps are taken to redact or truncate Social Security numbers, state and federal identification numbers and other financial account information. However, legitimate government, business and news gathering uses should not be hindered.

- For records not made available on the Internet, government agencies should establish security procedures for protecting personal information from improper disclosure, including procedures for retention and destruction of records.

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