



Conference will focus on terrorism's impact

The annual FOIFT state conference Sept. 20-21 in Austin promises prime time discussions on what's happening to freedom of information as a result of the war on terrorism. *Sunshine in Crisis* is the theme that will address security and privacy issues as they impact an open government in a free society.

Friday's program will consist of three panels designed to explore the urgent and complex issues surrounding open government after 9-11 last year. *Point-Counterpoint: Do we have to Close Doors to be Secure?*, will examine issues related to open government and FOI in light of increased security in the war on terrorism.

Panelists will include Doug Clifton, executive editor of *The Plain Dealer*, Cleveland, Ohio, and Marianne Burtnett, a White House attorney assigned to the Office of Homeland Security, Washington, DC.

Freedom of Expression in Times of National Crisis, will examine the periods during national crises when our government has limited citizens' freedom of expression. These periods came after the Revolutionary War and the two World Wars, and we are again experiencing such a time. This panel will explore such historical occurrences and compare them to the current crisis.

Panelists will be David McHam, professor of journalism, University of Houston; Dallas attorney John Collins with Bursleson, Pate & Gibson; and Charles Davis, executive director, Freedom of Information Center, University of Missouri School of Journalism, Columbia.

The Privacy Paradox will consist of members of the State Privacy Task Force discussing the committee's focus and taking a look at privacy issues in the 78th Texas Legislature next year.

Friday activities also will include a keynote lunch address by the James Madison award recipient, author Vanessa Leggett of Houston, and her attorney, Mike DeGeurin of Foreman, DeGeurin, Nugent & Gerger. They will tell of their efforts to win her release from jail when she refused a grand jury order to turn over her notes about a society woman's murder.

Saturday morning's Open Government Seminar is designed to develop and enhance a better understanding of the changing landscape of an open government. The session will address hot topics in public information and open meeting laws. Speakers will include Katherine "Missy" Cary, chief of the Open Records Division for the Office of the Attorney General; Hadassah Schloss, open records administrator with the Texas Building and Procurement Commission; and a panel of FOIFT Hotline attorneys moderated by Thomas Williams, an attorney with Haynes and Boone, L.L.P.

The two candidates for Texas attorney general, Kirk Watson and Greg Abbott, will speak at a lunch that will conclude the Saturday session.

More states tightening up

The number of states that have passed anti-terrorism bills, or are considering similar measures, appears to be increasing.

Oklahoma, Louisiana, Michigan, Florida and Idaho all have approved such bills restricting access to certain records.

The Reporters Committee for Freedom of the Press says other states are considering similar anti-terrorism measures as exceptions in open records laws.

A provision in Oklahoma that would keep secret all records relating to security measures and security plans was passed by the Senate, amended by the House, and returned to the Senate for approval.



Open Government fight can be lonely – but here are two winners

By **Wanda Garner Cash**
FOIFT President

Vince Leibowitz, editor of Van Zandt Newspapers, fights a sometimes lonely battle for open government in East Texas.

Overseeing content for several papers in his group, including the *Canton Herald* and *Van Zandt News*, Leibowitz was the first weekly division winner in the 2002 Nancy Monson FOI Award.

In the daily division, *The Galveston County Daily News* earned top honors for the FOI award presented jointly by the Freedom of Information Foundation of Texas and the Texas Press Association.

The awards were presented at TPA's 123rd annual convention in June in Corpus Christi. The awards were named in honor of Nancy Monson, the FOI's executive director for many years, who retired in 2001 after providing nearly two decades of leadership on open government and public access issues. Nancy was on hand for the inaugural awards presentation.

During her many years of service, Nancy provided assistance and support to hundreds of Texas journalists and newspapers who turned to her for guidance on issues involving open records and governmental meetings.

As a fitting tribute to Nancy's advocacy, the FOI awards will honor journalists and/or newspapers for outstanding efforts that uphold First Amendment principles, increase public access to government, and improve awareness of state open government statutes.

It's conventional journalistic wisdom that the smaller the town, the darker the politics. Weekly newspapers and small dailies often find themselves as the lone watchdog of public access. Government business in Texas is too often the chicken-fried steak variety conducted at the cafe or in the parking lot over the hood of a pickup truck. Instead of following our open government laws, too often elected officials subvert them.

Whether the subversion is intentional or happenstance, a newspaper must constantly remind the government bodies (and the taxpayers) that public access is not negotiable.

Leibowitz did this when he tackled a recalcitrant county government and forced the elected officials to disclose financial information about back-pay requests from former county employees.

Contest judge Ray Sullivan of Freedom Communications said Leibowitz's efforts to shake loose these public documents was far from the norm.

"It led to the public learning it stood to lose millions of tax dollars because of a SNAFU, but only because of the dogged efforts of the editor, and the paper's owner and lawyers," Sullivan wrote in his comments.

Leibowitz, a journalism graduate from East Texas State (now Texas A&M at Commerce), found his way to newspapering after a brief stint in public relations. With support from group owner John Buzzetta, Leibowitz, redesigned the area weeklies with more emphasis on hard news.

The Monson award affirms his efforts.

Galveston's Heber Taylor led his news staff in what the judge called an "extraordinary effort" in coverage of HUD funding on the island.

Not only did the Galveston reporters gain access to stacks of documents, they offered additional public service by interpreting the data and presenting it to the readers.

Sullivan said the winning efforts underscore the worrisome reality of "bureaucrats who forget taxpayers shape our democracy for tomorrow based on as much truth and knowledge as they can get about themselves."

Editors like Vince Leibowitz and Heber Taylor understand the negative implications of this mindset and the critical role of the community newspaper in fighting for public access. By recognizing their efforts with this FOI award, we hope to buoy other editors and publishers around the state.

The FOIFT board is grateful for this new partnership with the Texas Press Association. We hope the Monson award will encourage and recognize community newspapers and make their battle for open government a little less lonely.



Whether the subversion is intentional or happenstance, a newspaper must constantly remind the government bodies (and the taxpayers) that public access is not negotiable.



James Madison Award goes to novice crime writer

A novice crime writer who refused a federal grand jury order to hand over her notes about a society murder and was jailed for five months will be presented the James Madison award by the FOIFT at its state conference Sept. 20 in Austin.

Vanessa Leggett spent five years working on a book about the murder of a woman in her Houston home in 1997.

She will receive the award at the John Henry Faulk Awards Luncheon at which she and her attorney, Mike DeGeurin, will speak about her experiences and the efforts to win her release from jail.

The award is named for Madison, who is known as the founding father of the U.S. Constitution and who played a major role in establishing the Bill of Rights. The FOIFT award is given to individuals for their efforts and support of freedom of information and open government.

Leggett sold the publishing

rights to her book to Crown Publishers, a division of Random House, which says the book is tentatively titled *The Murder of the Bookie's Wife*, and will be published in 2004.

An official of the publishing company told The Associated Press that "as a publisher concerned about First Amendment issues, we followed the news of Vanessa's imprisonment with a sense of awe and admiration."

The book will detail the murder of Doris Angleton, the investigation, and Leggett's imprisonment.

"I've fought long and hard for a story I believed in, and knew needed to be told," Leggett says.

Leggett was jailed in July of last year when she refused to give the grand jury her research. She was released from a federal detention center on Jan. 4 when the term of the federal grand jury investigating Robert Angleton expired.

Speakers cause problem

DALLAS – Some speakers who wanted to talk longer than an allotted three-minutes at a meeting of the Dallas school board created a temporary problem.

The problem resulted from complaints by a small group contending the board failed to comply with a 31-year-old federal court desegregation order under which the school district would adhere to a set of guidelines.

The sound system was shut off on one speaker who went past her allotted time, but she continued to talk anyway. Audience outbursts about not letting the speaker continue, resulted in the forum moving to a smaller room.

A smaller group was allowed in the room and the session was broadcast on closed circuit television in the auditorium where the board usually meets.

Katherine Garner named FOIFT executive director

Katherine Garner, who has been with the FOIFT for eight years in various capacities, has been chosen as executive director of the Foundation.

She has served as interim director since the resignation of Nancy Monson last fall.

"I am thrilled the Board of Directors is giving me the opportunity to take the Foundation to the next level," Garner said.

"In the current environment, access to information held by the government will be facing great challenges in the years ahead. With government records under assault like never before, the work of the FOIFT is more important than ever."

Garner assumed full responsibility for daily operation of the Foundation on June 5, following an announcement by Foundation President Wanda Garner Cash that the board had approved a search committee's recommendation.



The search committee said Garner's selection and the board's consensus "indicated a high level of satisfaction . . . with [her] initiative and leadership during the past eight months and confidence in her ability to lead the Foundation successfully in new directions."

Garner also serves as executive director for the National Freedom of Information Coalition.

Garner came to the FOIFT with a background in reporting, copy-editing and layout design. She gained management experience in various retail organizations and as a junior volunteer coordinator for Texas Scottish Rite Hospital for Children by supervising 150 junior volunteers.

She holds a Bachelor of Science degree in business journalism from the University of North Texas and a Master of Arts from the University of Texas at Dallas, with emphasis in business and nonprofit management and communications.



"With government records under assault like never before, the work of the FOIFT is more important than ever."

— Executive Director
Katherine Garner



When a single name becomes a ‘list’

Commentary

Texas has some of the strongest open government laws

of any state in the nation, yet universities and public schools are taking advantage of an exception in the Public Information Act when it comes to selecting the head of a university or the superintendent of a local school system.

In recent months, four of the state’s major university systems have chosen a new chancellor. Yet because of the manner in which those selections have been made, the public has been virtually cut out.

As a general rule, Texas’ open government laws provide citizens wide and open access to information. But an exemption in the law denies such openness when it applies to a university or local school board.

For example, regents at Texas Tech, Texas A&M University, the University of Texas, and the University of North Texas have each independently selected new chancellors to head their large university systems.

In each case, the university took applications and nominations and came up with a list of individuals to be considered for the positions. Yet as far as the public is concerned, only one applicant’s name was released by each university. Names of all other individuals considered at each of the universities were kept secret.

Prior to the law change, a citizen could request and obtain a full list of candidates being considered for the head of the university or for superintendent of the local school system. But representatives of those educational systems went to the Texas Legislature seeking an exemption in the open government laws to dramatically limit the requirement to turn over candidate lists.

Following extensive lobbying, the legislature passed

an exemption to the open record laws that would require universities and public schools, in selecting the head administrator, to reveal the “name or names” of “finalists” 21 days before the final decision was to be made.

Therein lies the problem. The proverbial list of “finalists” is never produced. What has happened and continues to happen at an increasing rate is that universities and school systems will release a single name as their “list” of finalists.

In effect, what appears to be happening is that regents and school trustees are selecting their chancellor/superintendent in closed meetings and then revealing that name 21 days before the token “official” vote.

Under current law, only universities and public schools have the option not to disclose the full list of candidates and nominees. Other governmental bodies, such as the city council, county commissioners, etc., do not have a similar provision. Thus, all candidates for jobs by appointment must be disclosed upon request.

When the special exemption was provided to universities and public schools a few years ago, the argument was made that the public could have notice of the “list” of finalists and thus be able to judge the qualification and merits of those actually being considered. However, as most recently indicated, universities and schools instead have released not a “list” but a single name, thus indicating that the final decision already has been made without opportunity for knowledge or input by the public.

It’s a likely bet that this issue will be raised with the Texas Legislature next spring with open government advocates arguing that the exception should be repealed so the public can learn the identity and judge the merits of all candidates for important educational positions.


Names of all other individuals considered at each of the universities were kept secret.



Paper wins suit against regents’ closed-door meeting

WICHITA FALLS – The firing of the president of Midwestern State University was ruled void by District Judge Roy Sparkman in a lawsuit filed by the *Wichita Falls Times Record News*.

The suit accused school regents of holding a closed-door meeting in which they decided to fire school President Henry Moon.

The newspaper editor,

Carroll Wilson, said the four-hour meeting was a flagrant violation of open meetings law.

“We believed all along we were right or we never would have filed the suit,” Wilson said.

An AP story says board members concluded a June 11 meeting by voting unanimously to fire Moon, effective July 15.

Regents received complaints from staff members and faculty who

accused Moon of misusing taxpayer funds and bypassing university and state policies. Moon denied the allegations.

Regents’ president Mac Cannedy Jr. said he disagrees with the decision. He said the board will keep pursuing Moon’s firing.

The paper never disputed the board’s right to fire Moon, only whether regents properly followed the Texas Open Meetings Act.

Student newspaper flap settled

By Keith Shelton

UT-Tyler's student newspaper adviser will have her contract renewed and the university will have a new policy for governing its newspaper after a controversy that gained national attention. However, adviser Vanessa Curry said that going into the fall semester, some of the promises by the administration have not yet been kept.

"I am a little concerned that they have not followed through," said Curry, who did not teach this summer and who said she was exhausted by the whole ordeal. "I want to give them a little more time and see if they do what they said they would do."

For example, a publications committee agreed on has not been created. An editor for the student newspaper needed to be named and the dean selected one. Revisions in the handbook were agreed on, but have not been approved by the system regents in Austin.

And the administration promised to correct some letters that Curry says were inaccurate, including one to her former employer. "I was told they would be corrected and they have not been," she said.

Nevertheless, Curry says she plans to stay at the school and keep working with her students. "I am pretty happy with the way it worked out," she said, "but I'm apprehensive if they will follow through or not."

She said she is "extremely proud" of her students for the stance they took. "Unfortunately, it was a learning experience. It was a very powerful lesson they couldn't have gotten anywhere else. It made them stronger."

The spring student editor of *The Patriot* said the reinstatement and the new policy vindicated the newspaper. "I think this was about our right to be independent as a newspaper, and now the staff will be able to go on and work and not worry about whether or not they were going

to be able to do their jobs," Editor Melissa Tresner told *The Dallas Morning News*.

Curry was told in February her contract as adviser would not be renewed and policies were put in place that gave top administration officials the power to hire the editor and adviser, determine the paper's character and discipline its staff.

"The newspaper just got a little too aggressive for their tastes," Kenneth Casstevens, chairman of the UT-Tyler Department of Communications, said.

Casstevens told *The Dallas Morning News* that he was told that top administrators thought the paper had become too aggressive in using the Public Information Act to get information on everything from administrator salaries to crime reports and that they were upset about a student column criticizing a major donor's project.

After all the publicity, the administration reconsidered. The new publications governing committee is supposed to have five students, two professionals, the dean of student affairs and three faculty members, only one from the Communications Department.

The committee will recommend candidates for adviser, but the dean will pick the adviser. The dean also will have to approve any policy changes for the paper. The committee is supposed to pick the editor.

Previously, the adviser chose the editor. That still gives the administration more control than at many college student newspapers.

"The real truth is that we let communications fall apart between the newspaper, their staff and, for that matter, the Communications Department and the administration," Dr. Rodney H. Mabry, university president, said. "You'll not find any stronger advocate of First Amendment freedoms than I am."



"The newspaper just got a little too aggressive for their tastes."

— Chairman of the UT-Tyler Department of Communications
Kenneth Casstevens



AG candidates offer different ideas on handling FOI issues

HOUSTON - Two candidates for Texas attorney general agree that government should be open and information available to the public. Each, however, offers different ideas on how to accomplish that.

Republican candidate Greg Abbott is a former justice of the Texas Supreme Court and says he takes a strict approach to interpreting the law.

His opponent, former Austin Mayor Kirk Watson, says he wants to educate local governments about open records and open meetings, and to shorten the time it takes for the attorney general's office to issue opinions. The two candidates spoke at a board meeting of the FOIFT.

"I am a big believer in open government," Watson said. He said he wants to help local officials understand laws ensuring open government. His opponent, Abbott, said the job is not about consensus building. "This isn't a job where we want to bring everyone to the table and work things out," he said. "This is a position where legal answers are required."

Both men said keeping a balance between an informed society and a secure society has become more important since Sept. 11. "Keep in mind the reason Sept. 11 happened, in a large part, was because people [responsible for it] hate our freedoms. If what we then do is react in such a way that we reduce those freedoms, they win," Watson said.

Abbott agreed, and said that with increased security there must be increased scrutiny of government. "If the level of scrutiny decreases while security increases, we are going down a road that is contrary to the path of freedom," Abbott said.



From the AG. . .

By John Cornyn

Members of the public are familiar with the open records rulings that my office issues under the Public Information Act. At the present pace, we will issue approximately 7,800 informal letter rulings during 2002. But did you know that these rulings are only one aspect of my office's daily involvement in open government?

Like every other governmental body, my office is subject to the Act. The public information coordinator of the Office of the Attorney General is responsible for responding to all requests for information that my office receives. The public information coordinator (known as "PIC") accepts requests by mail, by facsimile to (512) 494-8017, and by e-mail to amanda.crawford@oag.state.tx.us. On any given day, the PIC office has approximately 60 requests for information pending. The PIC office also provides open records training to our newly hired employees.

Open Records Letter Rulings and formal Open Records Decisions are prepared by the Open Records Division of my office. The attorneys, legal assistants, and administrative technicians in this division also contribute to open government in a number of other important respects.

For example, the Open Records Division is responsible for the operation of the toll-free Open Government Hotline, 1-877-OPEN TEX (1-877-673-6839). The hotline takes telephone calls from the public from 8:00 a.m to 5:00 p.m. Monday through Friday. Investigators, rather than attorneys, staff the hotline. Their role is to provide general information relating to the Public Information Act and the Open Meetings Act. The hotline also takes complaints from the public that involve compliance with the Public Information Act. These calls are referred to other personnel in the Open Records Division for investigation and disposition.

The Open Records Division also is continually involved in outreach to the public. Each year, the division presents my office's Statewide Open Government Conference in Austin. This event attracts members of the public and representatives of governmental bodies from across the state. The division's attorneys also participate in many meetings and conferences sponsored by other organizations. If you are planning such an event and would like to arrange for a speaker, telephone June B. Harden, senior managing attorney for Public Outreach, at (512) 936-1346 or send an e-mail to june.harden@oag.state.tx.us.

The division also produces the Public Information Handbook. This publication is the most comprehensive source of information about the Act. It is updated, revised, and reprinted at the conclusion of each session of the Legislature. The 2002 edition of the handbook is available online. Visit our web site at www.oag.state.tx.us, and click on Open Government. There, you'll also find the 675 formal Open Records Decisions that the Attorney General's Office has issued since the Act became law and every Open Records Letter Ruling issued since 1999, as well as the answers to frequently asked questions about the Act and a variety of other useful information. The handbook and other open government publications also are available from our Opinion Library. To place an order, send a fax to (512) 462-0548.

These and other resources make open government more accessible to every member of the public. I encourage you to take advantage of them.

Mexico approves new FOI law

Mexico now has a freedom of information law, following recent action by the country's Congress. President Vicente Fox, who signed the bill in June, said it represents "a historic change" for his country.

The new law is patterned after the Texas Freedom of Information Act. As part of their research, Mexican leaders called on the Texas Attorney General's office for information about Texas' open government laws, and the AG's staff provided educational seminars and other forums.

Mexico's new law guarantees citizen access to nearly all federal government information, including that of the Congress and the courts.

The government may withhold information on private citizens or that which is considered vital to national security. Access to many types of judicial records, such as case files, also would remain restricted.

Everything else, from records on public spending to contributions to political parties, would be available to the public.

The legislation establishes the Federal Institute for Access to Public Information. It would have 20 days to respond to requests and 10 more days to provide information. Failure of the Institute to respond within 20 days would mean automatic approval of an information request.



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Small town, big story, tough officers

(Editor's Note: Freedom of information oftentimes does not come easy. Sometimes the bigger the story, the bigger the "official" roadblocks and threats. The following story about the bridge collapse that claimed 14 lives was titled "Media Get Rough Reception in Oklahoma." It was written by Ken Raymond and printed in The Daily Oklahoman.)

WEBBERS FALLS, OK. - It's 6 p.m. in the small town of Webbers Falls, and on the third day of disaster recovery efforts, it is quiet and zipped up tight.

Television satellite trucks are parked in uneven rows in the parking lot of a Love's Country Store. Camera crews are set up under a canopy erected on the concrete. Print reporters and still photographers mill about beneath the thunderous skies that postponed recovery efforts of the collapsed bridge for some time during the afternoon.

Satellite trucks can't be seen on the town's streets though. No reporters, either. For the most part, the media learned its lesson from the previous two days. Stray from the parking lot at your own risk.

Consider Brett Shipp. On Tuesday, Shipp — a reporter for a Dallas television station [WFAA, Ch. 8] — completed an interview with Mayor Jewel Home and accompanied her across the street to the police station. His cameraman kept the tape rolling.

"As soon as we finished with her," Shipp said, "they moved in."

"They" were a group of National Guardsmen and a representative of the medical examiner's office in Tulsa. The men ordered Shipp to leave. The newsman can be heard on tape arguing it was unconstitutional to order him removed from a public street.

"I will go to jail if I have to," he says on tape.

The reply came from the medical examiner. "You will probably have to," he said. He didn't. Later, Shipp said: "We went down to the park to shoot the river, and they threw us out of there, too."

The park also was where *The Oklahoman's* state correspondent, Sheila Stogsdill, was handcuffed by Webbers Falls police and detained briefly. Stogsdill, who was walking in a public area away from the portion of city hall set aside for families of the victims, refused to leave the park after John Hnath of the Tulsa medical examiner's office ordered local police to arrest her. She said she was never told what crime she was suspected of committing.

Officer Luke Morris handcuffed the reporter and took her to the nearby police station. Moments earlier, Johnny Pollard, a city councilman for eight years and part time police officer, had shouted: "Arrest her! Arrest her. Handcuff her!" Stogsdill was not arrested. Mayor Home, who also is the police commissioner, chastised Morris and insisted Stogsdill be released.

All three public officials later apologized, Mayor Home breaking into tears and asking Stogsdill to come back and visit at the mayor's expense. "This should not have happened," the mayor said.

A Tulsa television station may have earned the most threats. Three times, Oklahoma Highway Patrol troopers attempted to evict them from private property upon which they had set up cameras with the landowners' permission. They were nearly arrested a fourth time while shooting footage on a public road in Gore.

Patrol Lt. Chris West said he doubted troopers actually threatened to arrest reporters. "Unless I have a name and badge number, then I don't believe it," West said.



"I will go to jail if I have to."

— Reporter Brett Shipp



FOIFT welcomes new education director

A new Education Director for the FOIFT has been selected to replace Sally Van Gee who has moved to Germany.

Stacey Bragalone, who has more than 10 years' experience in the nonprofit sector, came aboard shortly before Sally left.

The initial appeal of the job, Bragalone says, was an opportunity to get back to her roots in nonprofit work.

"I find the work here to be a refreshing challenge and the issues

inspiring."

Most recently, she worked as a meeting planner for a medical education company, and produced medical conferences on behalf of pharmaceutical companies serving to educate more than 1,200 oncologists worldwide.

Prior to her meeting planning experience, Bragalone served as program director for a prominent mental health advocacy organization where she developed, implemented and administered programming,

produced publications, coordinated symposia, and provided consultation services.

She has a Bachelor of Social Work degree from the University of North Texas.



Board of Directors



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**The Freedom of
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Foundation of Texas**
400 S. Record, Suite
240

Dallas, TX 75202
Office Telephone
(214) 977-6658
Fax (214) 977-6666

HOTLINE
1(800) 580-6651

Web site -
www.foift.org
e-mail -
foift@airmail.net

Editor, Jud Dixon
Contributing Editor,

Keith Shelton
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