



Open Government Laws: Enforcement

Open government laws – sometimes called sunshine laws – set regulations that define the public’s access to information and records held by governmental bodies. The creation and enforcement of open government laws takes place at both the federal and state level. At the federal level, The Freedom of Information Act of 1966 regulates the disclosure of information relating to federal administrative agencies. The federal act does not apply to states, meaning that each state is responsible for defining its own open government laws. Iowa addresses open government laws in chapters 21 and 22 of the Iowa Code. Chapter 21 specifically focuses on open meeting laws and chapter 22 specifically focuses on public record laws.

Chapter 21: Iowa’s Open Meeting Law

Definition

Iowa’s open meeting laws first define what the state’s governmental bodies are and what constitutes a meeting. Next, the laws specify what constitutes an open meeting and when meetings must be open.¹

Chapter 22: Iowa’s Public Records Law

Definition

Iowa’s open records laws regulate public access to government records by defining what constitutes a public record as well as specifying what records are open for supervised inspection and dissemination.²

¹ Iowa Code 2007 Home Page, 2007. <http://coolice.legis.state.ia.us/Cool-ICE/default.asp?category=billinfo&service=IowaCode&ga=82>

² *Ibid.*

Enforcement of Chapter 21 and 22

The Iowa Code addresses the enforcement of both open meetings (21.6) and public records (22.5.) laws. The enforcement provisions for both open meetings and public records are as follows:

Any aggrieved person, taxpayer to, or citizen of the State of Iowa, or the attorney general or county attorney, may seek judicial enforcement of the regulations provided in chapters 21 and 22. It is the responsibility of the government body to show they complied with the law.³

Enforcement of Open Government Laws in Iowa

Chapter 21 does not empower a specific commission or agency to enforce open meeting laws. For open records, enforcement is covered under chapter 2C section 9 of the Iowa Code which gives the Office of Citizen's Aide/Ombudsman the power to investigate and offer opinions for complaints related to public records. The Office of the Citizen's Aide/ Omsbudman is an independent and impartial agency. The members of the office are appointed by the legislative counsel with approval and confirmation from the Iowa Senate and House of Representatives.

From January 1, 2003, to August 31, 2007, the Office of Citizen's Aide/Ombudsman received 255 complaints and 795 information requests. Of the 255 complaints, 95 were at least partially substantiated. This means that a portion of the complaint must be found to be legitimate. Of the 255 complaints, 71 are still pending.⁴

Penalties for Violating Open Government Laws in Iowa

The violation of chapter 21 and/or 22 can lead to numerous civil penalties.⁵ These penalties are enforced by the courts. These penalties are:

- Fines for members of governmental bodies who participated in violation of the law (ranging from \$100 to \$500.)
- Payment of all costs and reasonable attorney fees to any party establishing a violation.
- A possible mandatory injunction punishable by civil contempt ordering the offending governmental body to refrain for one year from any future violations of the chapter.

³ *Ibid.*

⁴ *Freedom of Information, Open Meetings, and Public Records Study Committee Home Page*, 2007. http://www.legis.state.ia.us/scripts/docmgr/docmgr_comdocs.dll/showtypeinterim?id=true&type=ih&fy=2005&com=216

⁵ *Iowa Code 2007 Home Page*, 2007. <http://coolice.legis.state.ia.us/Cool-ICE/default.asp?category=billinfo&service=IowaCode&ga=82>

- Removal from office members of a governmental body that have incurred two violations.

Unlike chapter 21, violation of chapter 22 can also lead to criminal penalties.⁶ The penalties are:

- Being charged with a simple misdemeanor for knowingly violating chapter 22, which means confinement for up to 30 days or a fine between \$65 and \$625.

Claiming ignorance of the law is not an acceptable defense against either the civil or criminal charges. This is established in Iowa Code chapter 21.10, which states that whoever has the authority over a governmental body is responsible for educating and providing its members with information on the state's open government laws.

Enforcement In Other States

Enforcement of Open Government Laws

In all states, the courts enforce open government laws. In addition, Kentucky grants enforcement powers to the Attorney General's Office. Other states use commissions and/or committees, public access counselors, and the Attorney General's Office to provide advice and information regarding open government laws.

Commissions/Committees

Connecticut and New York are two examples of states that use commissions and committees to investigate violations of open government laws.

Connecticut

In 1975, Connecticut established the Freedom of Information (FOI) Commission to help enforce open government laws. The FOI Commission consists of five commissioners appointed by the Governor with the approval of the state legislature. The Commission has the power to investigate all alleged violations of the Connecticut Freedom of Information Act. If the alleged violator fails to comply with requests for information the Commission has the power to issue subpoenas and require the production of relevant materials.⁷ The commission also employs 16 full-time staff members.

⁶ *Ibid.*

⁷ The Freedom of Information Act" CT.gov State of Connecticut. October 2007.
<<http://www.state.ct.us/foi/2006FOIA/Sec.%201-205.htm>>

According to the most recent Connecticut Public Access Survey (2000), the FOI Commission receives approximately 10,000 inquires per year, and averages between 500 and 600 formal contested case filings annually.⁸

New York

New York currently regulates open government laws with the Committee on Open Government, comprised of 11 members. Of these 11 members, five are from the government and six are from the public. The five government members are the Lieutenant Governor, the Secretary of State, the Commission of General Services, the Director of the Budget, and one elected local government official. At least two of the public members must be news media representatives⁹.

Specific responsibilities of the Committee involve delivering advisory opinions on complaints brought to them. It also announces rules and regulations relative to procedural aspects of the open government laws. From 2005 to 2006, the Committee wrote over 900 advisory opinions.¹⁰ These advisory opinions are not legally binding, meaning that governmental bodies do not have to comply with the opinions. Instead, the opinions provide guidance to governing bodies and can be a helpful resource for a complainant who takes his or her case to court.

To keep track of how the state's open government laws are working the Committee also submits an annual report to the Governor and the legislature describing the Committee's experience under each of the statutes and the Committee's recommendations for improving them.¹¹ One way New York improved its open government laws was to become the first state to require governmental agencies to accept requests online and transmit records via e-mail.¹²

⁸ "Access to Public Records in Connecticut", [CT.gov](http://www.ct.gov), 1999, Connecticut Foundation for Open Government and Connecticut Freedom of Information Commission, October 2007, <http://www.state.ct.us/foi/Access_Survey/1999%20Public%20Access%20Survey/Cover-Intro.htm>

⁹ "Your Right to Know", NY.gov, Committee on Open Government, October 2007, http://www.dos.state.ny.us/coog/Right_to_know.html

¹⁰ "Report to the Governor and State Legislature 2006", [NY.gov](http://www.dos.state.ny.us), 2006, Committee on Open Government, October 2007 <<http://www.dos.state.ny.us/coog/2006report.htm>>

¹¹ "Committee on Open Government: Mission", NY.gov, Committee on Open Government, October 2007, <<http://www.dos.state.ny.us/coog/coogwww.html>>

¹² *Ibid.*

Public Access Counselors

Indiana and Illinois use public access counselors investigate violations of open government laws.

Indiana

The Governor appoints Indiana's Public Access Counselor to a 4 year term, and the Counselor can serve an unlimited number of terms. The main responsibility of the Counselor is to provide advice and assistance to individuals and groups regarding the state's open government laws. To file complaints the Office of the Public Access Counselor provides a form and a phone number on its website. The Counselor's powers and duties include:

- Working with the office of the Attorney General to prepare educational programs and reading materials.
- Distributing the educational materials to newly elected or appointed public officials.
- Responding to informal information requests made by the public and public agencies by telephone, in writing, in person, by facsimile, or by electronic mail.
- Issuing advisory opinions on the application of open government laws to individuals, groups, and public agencies. The advisory opinions are not legally binding; the only method of forcing compliance is to go to court. However, if the Public Access Counselor issues an advisory opinion before a lawsuit is filed, the plaintiff is entitled to collect attorney fees, court costs, and reasonable expenses of litigation if the plaintiff wins the lawsuit. The Counselor cannot issue an advisory opinion once someone files a lawsuit on a specific matter.¹³

Illinois

The powers and duties of the Illinois Public Access Counselor follow those of Indiana's Public Access Counselor except for two major differences. First, the Attorney General (rather than the Governor) appoints the Illinois Public Access Counselor. Second, Illinois state code does not explicitly define the duties of the Public Access Counselor. House Bill 1393, which

¹³ "Chapter 4. Public Access Counselor", [IN.gov](http://www.in.gov), Office of Code Revision Indiana Legislative Service Agency, October 2007, <<http://www.in.gov/legislative/ic/code/title5/ar14/ch4.html>>

is currently being considered, would establish these duties for the Counselor in Illinois Code.¹⁴

Attorney General's Offices

In most states, the Attorney General's Office handles investigating violations of open government laws. Kentucky, Rhode Island, and Florida provide different examples of the Attorney General's role.

Kentucky

The Attorney General issues legally binding decisions in disputes and provides informational booklets to public officials and citizens regarding open records information.¹⁵

Rhode Island

The Attorney General issues three forms of advisory opinions: oral, telephonic and written opinions. These opinions are not legally binding; instead they simply express the office's opinion.¹⁶

Florida

The Attorney General's Office oversees a voluntary mediation program, designed to resolve public access disputes. Florida started this program in part to lower typical legal costs associated with these disputes. In 2003, the mediation program handled 149 disputes, resolving 74% successfully before going to court.¹⁷

Penalties for violating Open Government Laws

Penalties for violating open government laws vary greatly across the country. Some states have no penalties for violating open government laws, while other states impose both civil and criminal penalties for violations of both open meeting and public record laws. As stated earlier, Iowa has civil penalties for both of its chapters—however, it can also impose criminal charges for the violation of public record laws. Figure 1 summarizes the variation across states.

¹⁴Illinois General Assembly. "Bill Status of HB1393, 95th General Assembly." March 2007. <http://www.ilga.gov/legislation/BillStatus.asp?DocTypeID=HB&DocNum=1393&GAID=9&SessionID=51&legID=30182>

¹⁵Office of the Attorney General, Gregory D. Stumbo, For the Commonwealth of Kentucky. "Open Records and Open Meetings." May 2007. <http://ag.ky.gov/civil/openrecords.htm>

¹⁶State of Rhode Island, Office of Attorney General, Patrick C. Lynch. "Open Government/ Access To Public Records." http://www.riag.state.ri.us/civil/open_gov/index.php

¹⁷Jean Maneke and Jill Barton, The Missouri Bar. "Providing Public Assistance For The Sunshine Law." March – April 2007. <http://www.mobar.org/e360a33b-dff9-4c6a-aca4-5bf94686ed8d.aspx>

