

Let the Sunshine In!

by

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One of the main checks and balances in public institutions is the right of citizens to review official documents, to see how public funds are spent and how decisions are made. In our opinion, the benefits to public colleges of “sunshine laws” – the state equivalents of the Freedom of Information Act (FOIA) - are substantial, but poorly understood.

Both of us have extensive experience with sunshine or open record act (ORA) requests - one in his role as a rank-and-file professor with concerns about misuse of public funds in his state university, and the other in his roles as department chair, chair of a Chancellor Search Committee, and faculty advocate for the American Association of University Professors (AAUP).

Contrary to common understanding, for example, sunshine laws are remarkably easy to use. In Georgia, a citizen need only tell the record custodian, verbally, “I would like to see the following records...”. No written request is required, nor even mention of the magic words “Georgia Open Records Act”. One of the most effective methods for requesting documents is via email, which provides an automatic record and time stamp of the request.

From the standpoint of the record custodian, sunshine laws are equally easy. A college or university administrator deciding which documents are subject to disclosure need only consult the campus or regents attorneys. Of course there are always issues balancing privacy and openness, just as in the FOIA setting, but those are matters for the courts, not for the people who request or maintain campus records.

Open records laws can help safeguard public funds. Ordinary college professors and staff are often more aware of potential abuses than their supervisors, and the ability for non-administrators to review financial documents can shed light on financial problems. Supervisors at Georgia Tech, for instance, routinely approved payments for trips many faculty found questionable. After ordinary professors obtained records through the ORA, they discovered glaring evidence of financial misdeeds, including reimbursement to one administrator for a 3606-mile jeep trip in the Yukon.

These discoveries led to audits by the Board of Regents, and investigation by the Georgia attorney general, resulting in a reprimand, repayment of tens of thousands of dollars of state funds, and removal of one administrator from office. More significantly, the attorney general found that the abuses were not confined to the individual department, but were “systemic”, and demonstrated a “lack of Institutional control” over travel and expense payments [[ago01](#), [ago02](#)]. On an infinitely grander scale, “billions of dollars” of potential lost revenues in retirement and endowment funds at the University of California were exposed via the California Public Records Act [[hea01](#)].

Sunshine laws also shed light on other internal processes, by permitting open comparisons of such things as performance evaluations and allocation of resources. While an individual annual performance rating, in isolation, may appear innocuous, comparison of it with other ratings may provide new perspectives. ORA requests in a department at Georgia Tech disclosed the fact that one whistleblower’s evaluation was the

only “below expectations” rating among the fifty-odd professors in his department, and eventually led to external reevaluations and substantial salary corrections. The financial dealings between universities and their athletic departments was made more open when the Pennsylvania Right to Know Law and Sunshine Act led to the release of head football coach Joe Paterno’s salary at Penn State [[url03](#)].

Negative aspects of openness in presidential searches have been widely publicized, but openness also has striking benefits in search processes. Abusive college administrators are often “promoted” from one campus to another, just as they are in other institutions. A candidate’s former supervisors, especially those that are anxious to get rid of a problem, are not likely to reveal serious deficiencies in their glowing letters of recommendation.

Open records can help correct that. Evidence of financial misdeeds, abuse of power, suppression of documents, discrimination and retaliation can often be found via ORA requests to review audits, faculty grievances, responses to ORA requests, and state-level EEOC complaints. It is essential for members of the campus community to be able to provide informed input, from the campus perspective, to senior-level search committees, as well as to other internal and external review committees.

Sunshine laws also provide substantial benefits even in cases where there are no records to review. A request can be used to disseminate information, since the request must be sent to all pertinent records custodians. Department chairs in one Georgia university, during a year of announced “no raises”, were indirectly informed of massive secret raises in one department by an ORA request to see records of similar raises in all other departments.

Another major benefit when there are no records is that the custodian must officially declare so, forcing the creation of a powerful new record – one that simply says “No such records exist”. In Georgia, a university that promised the attorney general to investigate certain financial misdeeds (double-billing trips, etc.), was compelled to officially admit there were no records of any such investigation. That official ORA response, in turn, led to subsequent investigation by outside agencies.

The use of sunshine laws to see documents is certainly not without risk. It is often viewed as the first step towards whistle blowing. Colleagues who are supporters of the culprits may publicly condemn ORA requests as acts of cowardice, invasion of privacy or even discrimination. As the AAUP found was the case at Georgia Tech, retaliation by the administration can also be severe, adversely affecting evaluations, salary decisions and even employment status [[aau01](#), [aau02](#)]. The reason is very simple – few decision-makers are willing to expose errors to external examination. Congressmen, CEO’s, governors, and American presidents – all fight tooth and nail to prevent exposure of secret memos and dealings, particularly if those dealings suggest ethical or legal failings. Universities, unfortunately, are no different.

Sunshine laws are an important part of our democracy, a natural complement to the FOIA. We employees at public colleges and universities owe our very livelihoods to our fellow taxpayers, and have a special obligation to ensure that the public trust is not violated. And it is our *duty* as professors to question the status quo – otherwise, we would still be arguing the world is flat.

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