



# The NEFAC Report

*New England's monthly right-to-know dispatch*

Prepared by the [New England First Amendment Coalition](#) in partnership with the First Amendment Center at Northeastern University

July 2010

*The monthly NEFAC Report monitors print and online coverage of public access issues in the six-state region. Visit our revamped Web [site](#) for the NEFAC blog, media updates from around the region, guides to the states' right-to-know laws, legal contacts and more.*

## Board mum on summary dismissal of town manager

Something is rotten in the town of Becket -- as in the fish rotting from the head down, with apologies to Shakespeare. No wonder more than 200 Becketeers have been rising up in revolt against their wildly out-of-control Select Board. Prince Hamlet of Denmark's description of his country as "an unweeded garden" of "things rank and gross in nature" fits Becket's board.

Townsfolk would be well advised not only to pursue a recall petition seeking the ouster of the three members (admittedly a Byzantine process) but also to demand that the state attorney general investigate possible violations of the open meeting law.

If you haven't been following this fascinating Berkshire intrigue, here's a quick take: On July 2, the Select Board summarily dismissed the town's capable, professional administrator, Tony Blair, who had won preliminary approval for \$328,000 in grants. (An application for a \$998,000 Federal Community Development Block Grant was denied since then.) His "crime," if any, may have been that he doesn't suffer fools gladly. [Read more](#)

- Clarence Fanto, *The Berkshire (Mass.) Eagle*  
7/18/10

## School confidentiality law being too broadly applied

LEWISTON, Maine - Since 1974, the Family Educational Rights and Privacy Act has guaranteed students that their academic records will be confidential, but students and their families are permitted access to those records. The act, known as FERPA, applies to students attending any private or public school, elementary grades right through college, and to any educational agency that receives federal funds.

What that means is that if Johnny Student doesn't get promoted to the seventh grade because he failed math and history classes, no one other than the school, Johnny and his family is entitled to that information.

FERPA protects students.

It was not drafted, nor was it ever intended, to shield school policies, practices or personnel.

And, yet, interpretation of the law has become perverted over time and public officials are increasingly denying requests for information about what happens in our schools.

On Wednesday, the Sun Journal published an eye-opening investigation by Forecaster Reporter Emily Parkhurst about the use of therapeutic restraints in public schools in Portland, Scarborough and Lewiston.

[Read more](#)

- Sun Journal, *Lewiston, Maine*  
7/18/10

## Details on trooper crash disclosed, thanks to new law

CONCORD, N.H. - A state police trooper is to blame for the 2009 collision in which a motorcyclist was seriously injured because she made an unsafe U-turn on Route 16 in Rochester, the investigating officer concluded.

State Police Sgt. Daniel C. Berridge found Trooper First Class Elizabeth Keyes violated the state law that does not exempt drivers of emergency vehicles from operating with due regard to public safety.

"Although acting in good faith in the performance of her duties as a police officer," Keyes, 53, should have been certain it was safe to make a U-turn and checked to be sure any vehicles traveling behind her cruiser were at a safe distance, Berridge wrote in his investigative report.

Keyes did not return a call for comment Tuesday.

The report was among documents released Tuesday under a new law requiring accident reports involving state vehicles be public. The New Hampshire Union Leader and other media outlets obtained the report under the state's Right-to-Know law.

The Union Leader and Portsmouth Herald previously went to court to argue accident reports related to this and another collision be released. Officials said the reports were confidential under the Driver Privacy Act. The court denied their request and was reconsidering its decision when the governor recently signed legislation amending the law to require the reports be public. [Read more](#)

- Kathryn Marchocki, *New Hampshire Union Leader, Manchester, N.H.*  
7/14/10

## School board members at odds over meeting minutes

AVON, Conn. - School board Chairwoman Peggy Roell and Interim Superintendent Jody Goeler have been named in two Freedom of Information complaints filed by another board member.

Houston Putnam Lowry, the board secretary, filed the complaints last week after a delay in posting minutes from a June 29 special meeting during which the board voted 8-1 to extend Goeler's appointment as interim school chief through July 31.

In minutes Lowry submitted July 1, the Democrat included a sentence explaining his reasons for voting against the appointment - that no formal superintendent search has been conducted, and the board's conflict of interest policy would be violated because Goeler's wife is a teacher in the district.

But the town's school board minutes traditionally do not include explanations of votes, a point that Roell argued in a few back-and-forth e-mails with Lowry last week. [Read more](#)

- Vanessa De La Torre, *Hartford (Conn.) Courant*  
7/13/10

## Town board mulling openness already required by ME law

The Jay School Committee is considering a policy requiring its members to hold votes in public, and specifically prohibiting votes by secret ballot.

How curious, since state law already requires that.

Does the committee truly need to enact a policy to require members to abide by state law?

We certainly hope not.

Maine's Freedom of Access Act governs how public officials conduct their business, and very specifically requires that all business be conducted in public. The law requires that all "actions be taken openly ... and deliberations be conducted openly." That includes votes, which result from deliberations and is how public officials take action.

Any vote taken by a secret ballot is not action taken in public. It's a farce.

Jay School Committee members should know this because each of them, even the most recently elected, has completed the state's mandated freedom of information training course, for which they are to be congratulated. [Read more](#)

- *Sun Journal, Lewiston*  
7/12/10

## Retired publisher honored with lifetime FOI award

The public's right to have an open and accountable government has been the foundation and ethic for Forrest Palmer in his four decades as a newspaper professional and his most recent two decades as a citizen advocate.

For this work, the 86-year-old former editor, general manager and publisher of The News-Times of Danbury has received the 2010 Lifetime Achievement Award from the Connecticut Council on Freedom of Information.

"I was very flattered and honored to get it," Palmer said Thursday. "I've worked very hard to get meetings open, to keep a free flow of information as much as possible."

The award cites his "steadfast commitment and extraordinary efforts on behalf of open government and a free and vigorous press." [Read more](#)

- Eileen FitzGerald, *Connecticut Post, Bridgeport, Conn.*  
7/11/10

## Newspapers, state spar over access to candidate's records

AUGUSTA, Maine - Lawyers for the state and the Kennebec Journal are sparring over whether records from John Richardson's campaign for Maine governor should be open to the media -- and thus the public.

The two sides now disagree over what documents should be included in a stipulated record for the judge. They've asked for a conference with Justice Michaela Murphy to settle the matter.

In late May, MaineToday Media Inc. -- owner of the Kennebec Journal in Augusta, Morning Sentinel in Waterville and Portland Press Herald -- sued the Maine Commission on Governmental Ethics and Election Practices seeking documents received in John Richardson's failed effort to get public funding for his gubernatorial campaign.

MaineToday Media, represented by attorney Sigmund Schutz, went to Kennebec County Superior Court after the commission refused to release the records.

The commission contends the records are confidential by statute and are not for public consumption, since they have been turned over to the Office of the Maine Attorney General as part of an investigation.

[Read more](#)

- Betty Adams, *Kennebec Journal, Augusta, Maine*  
7/9/10

## Nashua right-to-know exception gets through legislature

Now that most activity has come to a close in the 2010 legislative session - barring any further budgetary emergencies - it's a good time to catch up on bills that may have fallen under the radar in the lawmakers' annual rush to wrap up business.

Unfortunately, one of those bills that made it across the finish line was one we consistently have spoken out against during the past two years - a bid by Nashua officials to carve out a collective bargaining exception to the state's Right-to-Know Law.

You remember: That's the bill (HB 379) Mayor Donnalee Lozeau asked Nashua lawmakers to file in response to a Hillsborough County Superior Court judge ruling in favor of The Telegraph in its lawsuit over a closed-door meeting between the Board of Aldermen and the Board of Education on the eve of a threatened teachers' strike in March 2008.

As we reported back in January, the House of Representatives voted, 199-141, in favor of the bill, which was sponsored by Nashua Reps. David Cote and Pamela Price, and Nashua Sen. Bette Lasky. Then on May 12, the second to last day for it to act on all remaining House bills, the Senate gave its blessing on a voice vote.

That's the bad news. [Read more](#)

- *The Telegraph, Nashua, N.H.*

## ME turnpike figures raise questions about payroll

The Web site maineopengovernment.org, which tracks state and local spending, on Wednesday added the Maine Turnpike Authority to the roster of agencies it probes.

The MTA was forthcoming with the information after it was handed a Freedom of Access Act request by the Maine Heritage Policy Center, which runs the Web site under the auspices of its Center for Open Government, said coordinator Sam Adolphsen.

"They were very helpful once we put in the request," Adolphsen said. "Overall, I think their spending is probably in line with other agencies, but there are definitely questions that have been raised."

Key among them was the information regarding the salaries of toll collectors, he said.

"When the MTA instituted E-ZPass, they lauded it as a way to save money as they could cut toll collectors from the payroll," he said.

On the surface, he said, the MTA did reduce the number of collectors from 361 in 2006 to 308 in 2009.

"However, total payroll went up \$3 million," he said. "And then we finally noticed that turnpike employees earning \$80,000 or more went from 43 in 2006, or 5 percent of the work force, to 74 in 2009, 13 percent of the work force." [Read more](#)

- Deborah McDermott, *Portsmouth (N.H.) Herald*

7/8/10

## Patriot Ledger asks panel to try again on hiring director

WEYMOUTH, Mass. - The Patriot Ledger is asking the Weymouth Housing Authority to start from scratch its search for a new executive director after what the newspaper argues were several violations of the state's Open Meeting Law.

The Ledger sent a letter on Wednesday to the chairman of Housing Authority's board of commissioners, Victor Pap, asking the board to rescind its vote to offer a contract to Michael Flaherty, currently the director of operations at the much larger Somerville Housing Authority.

The letter, signed by Managing Editor Terry Ryan, listed repeated violations of the Open Meeting Law.

After interviewing six candidates in public over two days, then bringing back three candidates for a second round of interviews last week, the board offered Flaherty a three-year contract Tuesday to be executive director at \$78,000 year. Flaherty said later he has not made a final decision on taking the job. [Read more](#)

- Allison Manning, *The Patriot Ledger, Quincy, Mass*

7/8/10

## With no public input, housing board hires new director

WEYMOUTH, Mass.- With no public discussion of why it chose him, the Weymouth Housing Authority board of commissioners offered the position of executive director to the director of operations for the much larger Somerville Housing Authority.

Michael P. Flaherty on Tuesday was offered a three-year contract at \$78,000 a year.

Flaherty said he had not made a decision on whether to accept the position.

The public portion of Tuesday's meeting at the housing authority offices lasted just more than one minute before commissioners voted to go behind closed doors to discuss "contract negotiations of nonunion personnel," board chairman Victor Pap said.

The dozen or so residents and staff in the room at the housing authority's Essex Street offices refused to leave, with one tenant, Barbara Baxley, demanding to know why they were going into executive session.

"We're not leaving," Baxley said.

"You'll be removed if you don't leave," warned Pap, who is also a town councilor.

"Remove us all then," Baxley said. "What are you going to do, carry us out one by one?"

[Read more](#)

- Allison Manning, *The Patriot Ledger*  
7/7/10

## Access to public vehicle data a good step, but more needed

On Feb. 5, a Seabrook police officer ran a red light while doing 100 mph in his cruiser and crashed into another car. The Portsmouth Herald sued to get the accident report because the town refused to release it, citing the state's Driver Privacy Act. The report, which the Herald obtained via other sources, stated that the officer broke at least three state laws.

The public should not have to rely on journalists to obtain such information.

This year, after this newspaper went to court to get driver crash information for State Police officers, legislators passed a bill that opened state vehicle accident reports and other related records to public inspection. That was a good first step, but more disclosure is needed.

The public ought to have access to all driving, repair and maintenance records for county and municipally owned vehicles, too. [Read more](#)

- *New Hampshire Union Leader*  
7/7/10

## Murphy guards public's right to know in CT

In the spectrum of Connecticut government, the Freedom of Information Commission is tiny, with fewer than two dozen employees and an annual budget that would barely cover the salary of a journeyman Major League Baseball utility player.

But in terms of impact and influence, it's a giant, with the power to rein in the most intractable public agency or official, whether it's the governor or a local planning and zoning commissioner.

Directing the efforts of the commission is Colleen Murphy, a soft-spoken Danbury native who's spent nearly two decades protecting the public's right to know what its government has done.

"She's sweet, but she has a backbone of steel," said Mitchell Pearlman, the commission's retired executive director, who recruited Murphy straight out of law school in 1990. [Read more](#)

- John Pirro, *The News-Times, Danbury, Conn.*  
-7/7/10

## *Revised open meetings law stirs things up in MA*

### Meeting law update leaves some officials with questions

Although a revised Open Meeting Law went into effect earlier this week, some local officials remain confused about the implications of the reworking on their ability to communicate.

"I think this is really clamping in on freedom of speech," Framingham Selectman Ginger Esty said. "It seems like it's muzzling and hampering town officials."

The new law, which took effect Thursday, aims to increase transparency and prevent decision-making out of the public eye by redefining deliberations as "an oral or written communication in any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction."

Some officials think the revisions to the law were poorly written and have not been well-defined.

"When I look at the new Open Meeting Law, I'm really quite disgusted with it," Framingham Town Meeting member Steve Orr said. "What we have here is extremely badly written. ... Nobody knows what it means, and there is no guidance." [Read more](#)

- Kendall Hatch, *The MetroWest Daily News, Framingham, Mass.*

7/7/10

## Editorial: AG should clarify revised law

Advances in technology have changed the way we communicate, so it makes sense to update the state's Open Meeting Law, which is intended to ensure government decisions are made in public, especially at the municipal level. But the latest OML update adds confusion where there should be clarity.

At issue is the law's requirement that "deliberations" by a quorum of any official committee must be done in public, at a posted meeting. As long as there has been an Open Meeting Law, some officials have violated it, discussing official issues at bars, coffee shops and over the phone. We've even caught selectmen plotting strategy in the men's room during a break in the meetings. Those situations require continued vigilance.

The OML update, which went into effect July 1, extends the prohibition to electronic media, defining deliberations as "an oral or written communication in any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction." [Read more](#)

- *The MetroWest Daily News*

7/7/10

## Officials scramble to meet changes

Changes in the state's Open Meeting Law have cities and towns scrambling to find new ways to do business and local officials more than a little angry over the extra time and effort they are expending to address the law that takes effect today.

"It's a solution in search of a problem and it is another unfunded mandate," said Gardner Mayor Mark P. Hawke.

Mayor Hawke said the city is spending time and energy addressing the law when the changes are likely to have little impact on the public's access to government. He said a major provision of the law is that all meeting postings must be available to the public 24 hours per day, seven days per week.

"City Hall isn't open 24/7," he said. "They've suggested a television set visible through a window constantly scrolling the meetings or a lighted outside bulletin board." [Read more](#)

- *George Barnes and Bradford L. Miner, The Telegram & Gazette, Worcester, Mass.*

7/1/10

## Timely posting of meetings required

Residents of Cape Ann communities and other cities and towns across the state should have better access to - and be able to keep better tabs on - the actions of their local governments under some changes in the state's Open Meeting Law that took effect July 1.

The new provisions have, in general, expanded the duties of municipal and school district boards and committees to post meeting agendas and minutes in a timely fashion.

And they have tightened some time requirements. Previously, for example, the mandate requiring boards to post notices for meetings 48 hours in advance included Saturday and Sunday, meaning a board could post a Monday meeting online on a Saturday. Now, if a board wants to post a Monday meeting, the state requires the notice to be tacked up on Thursday.

Committees and boards also must keep the notice displayed on the town web site and a place where the notice is accessible at all hours, according to Section 20 of the revised Open Meeting Law. E-mails and faxes will no longer be accepted as sole meeting notices, according to a notice from Rockport Town Clerk Fred Frithsen advising board and committee members in that community. [Read more](#)

- *Steven Fletcher, Gloucester (Mass.) Times*

7/6/10

## Clerk says revised law "a good thing"

WALTHAM - Many changes have been made to the state's Open Meeting Law to increase transparency,

City Clerk Russ Malone told the City Council's Policy Committee on Monday.

"Basically, I think it's a good thing," said Malone, president of the Massachusetts City Clerks Association. "It's going to lead into some good stuff."

As a part of the new law, the responsibility of enforcement shifts from the state's 11 district attorneys to the attorney general, and an Open Meeting Law advisory commission will be created, as well as a division of open government.

Requirements for posting notices of public meetings will expand under the new law.

The most important among the changes, said Malone, is the process and paperwork involved in posting agendas.

Agendas must be available and visible to the public at all times and posted in or on municipal buildings, said Malone. He and Mayor Jeannette McCarthy plan to install a bulletin board to display the information in the window facing the Common outside the elevator in City Hall. [Read more](#)

- Jen Judson, *The Daily News Tribune, Waltham, Mass.*  
6/23/10

## Dem committee suspects political use of city computer

TORRINGTON, Conn. - The Torrington Democratic Town Committee has filed a Freedom of Information Act request (FOIA) with the mayor's office, and alleges aide Stephen Nocera may have misused a city computer.

The committee accuses Nocera of using a city computer to send out a press release for Janet Peckinpaugh's campaign against Joe Courtney.

DTC Chairman Glenn McLeod filed the request Monday with Executive Secretary Maurette Meyer and said he expects a meeting with Nocera and the city's Corporation Counsel sometime in the coming week.

"I was told the city would look into the matter and consult corporation counsel," McLeod said.

According to McLeod, the matter came to his attention after looking at several political blogs and websites. McLeod said he visited the Hartford Courant's "Capitol Watch" blog and saw an entry that mentioned Nocera's use of a city computer.

"We're filing the FOI in order to see if this is a one-time use of if this is an on-going issue," McLeod said. "I've been told that it may be against city policy, but we'll find out soon." [Read more](#)

- Mike Agogliati. *The Register Citizen, Torrington, Conn.*  
6/30/10

## Approving new hires in batches a bad idea

It's certainly not the end of Andover democracy as we know it. But the selectmen's decision to begin approving new hires, committee appointments and reappointments with one quick, nondescript vote is wrong-headed.

It's wrong-headed because it is all about making the business of government more convenient for officials instead of more accessible for residents. And it removes the oversight and positive pressure on officials of knowing there will be public scrutiny involved with filling jobs and powerful assignments.

Until recently, selectmen would take a few minutes during most meetings to name and approve people recommended by the town manager and department heads to fill vacant town positions. It usually happened with little discussion, and was little more than a rubber stamp. Now, there will be no mention of the individuals hired at all, thanks to a new procedure implemented by Chairman Jerry Stabile Jr. [Read more](#)

- *The Andover (Mass.) Townsman*  
7/1/10

## Info on state car accidents available to public

PORTSMOUTH, N.H. - Gov. John Lynch will sign legislation to make public all information pertaining to crashes of state-owned or leased vehicles, according to his spokesman, Colin Manning.

"Governor Lynch does believe these records should be available to the public, and he worked with the legislature to make sure this information would be public," Manning told the Herald.

According to the governor's office, the Driver Privacy Act will be amended "to make clear that the accident report, the technical accident reconstruction report, any repair estimate, or any similar document that constitutes a motor vehicle record that is created or received as a result of any accident or collision involving a state-owned or state-leased vehicle shall be a governmental record subject to inspection and disclosure" under the state's Right To Know law.

House Speaker Terie Norelli said Tuesday that the legislation was approved because "we all agreed that it should be public information.

She said the vote occurred late in the legislative session and was part of a bill pertaining to state motor vehicle fleets. [Read more](#)

- Elizabeth Dinan, *Portsmouth (N.H.) Herald*  
6/29/10

## VT court opens anti-gay marriage petitions

By a strong majority Thursday, the Supreme Court issued a setback for opponents of gay marriage who wanted to keep their identities secret. The justices favored transparency over privacy in a case testing whether signing a petition is a public act.

The case began with a bill that the Washington state Legislature passed in 2009, expanding the state's domestic partnership law. The new referendum was known as "everything but marriage" for the enhanced rights it gave same-sex couples.

People who opposed the bill gathered 120,000 signatures for a ballot measure asking voters to repeal it. That measure eventually reached Washington voters, who upheld "everything but marriage." Those who signed the repeal petition feared that they would be harassed if their names became public, so they went to court challenging Washington's Public Records Act.

They argued that a signing a petition is speech that is protected from disclosure. But in Thursday's 8-1 ruling, the Supreme Court disagreed. "Such disclosure does not, as a general matter, violate the First Amendment," Chief Justice John Roberts wrote for the court.

Washington's secretary of state, Sam Reed, was delighted. "It really is a victory for the people in terms of open government, transparency in government and the people's right to know," he said. [Read and hear more](#)

- Ari Shapiro, *Vermont Public Radio*  
6/24/10

## Heads up! Officials taking a look at access policies

State education policymakers are reviewing the information about misconduct by educators the Vermont Education Department posts on its website, let's hope with no harm to open government.

The department says the board is merely reviewing its policies and isn't looking to make changes. Vermonters should be nervous anytime government takes a look at its policy on access to public records. Too often, the knee-jerk reaction of government officials at all levels is to err on the side of privacy, hardly pausing to consider any impact on the public's right to know and the people's right to demand accountability from those paid with our taxes.

The Vermont Standards Board for Professional Educators, whose members appointed by the governor oversee the training, licensing and professional standards of teachers and administrators, met Thursday with the information available on the website on its agenda.

The information about disciplinary actions currently available ranges from short-term suspension to the revocation of a state teaching license. Absent are some reprimands without license suspension or revocation.

Society considers the ethical conduct of some professionals so critical that we've granted the state the power to license and regulate them. At the top of the list: doctors, lawyers and teachers.

[Read more](#)

- *The Burlington (Vt.) Free Press*  
6/25/10

## Town records accessible 24 hours a day

MIDDLETOWN, Conn. - Access to town records will be available 24-hours a day through a new system, officials announced Friday.

Middletown has joined Connecticut Town Clerks Portal, which gives access to view and print town records at any time of the day.

Working in partnership with Cott Systems, a privately owned software and service company, officials said they have identified a low-cost solution to make public records available to the public via the Internet.

"The process of digitizing our land records is one of our best accomplishments," said Sandra Russo-Driska, the town clerk. "This is just the first of what will hopefully be many new resources to help our citizens access the information they need."

For a small monthly subscription fee, materials can be viewed from the Internet while printing costs users \$1 per page. [Read more](#)

- *Donna Federico, The Middletown (Conn.) Press*  
6/19/10

## On NEFAC's Daybook

**Aug. 5** - NEFAC directors meet. **Northeastern University, Common St.,** Dedham, Mass., Barletta Hall. [Directions](#)

Remember, keep track of First Amendment news and issues from around New England with The NEFAC Report Blog on our Web [site](#).

### Comments welcome.

Send to *The NEFAC Report* editor Larry Laughlin, [lmlaughlin@gmail.com](mailto:lmlaughlin@gmail.com).

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