

Many state legislatures exempt themselves from record laws

By David A. Lieb, AP

JEFFERSON CITY, Mo. – State capitols are often referred to as “the people’s house,” but legislatures frequently put up no-trespassing signs by exempting themselves from public-records laws.

That tendency was apparent when the Associated Press sought emails and daily schedules of legislative leaders in all 50 states. The request was met with more denials than approvals.

Some lawmakers claimed “legislative immunity” from the public-records laws that apply to most state and local officials. Others said secrecy was essential to the deliberative process of making laws. And some feared that releasing the records could invade the privacy of citizens, creating a “chilling effect” on the right of people to petition their government.

Without access to such records, it’s harder for the public to know who is trying to influence their lawmakers on important policy decisions.

“The public has a right to know what their elected officials are doing, because it’s the people’s job to hold those folks politically accountable,” said Peter Scheer, executive director of the First Amendment Coalition, a San Rafael-based nonprofit that advocates for greater openness in government.

All legislatures allow people to watch and listen to their debates. But an AP review of open-government policies found that many state legislatures allow closed-door caucus meetings in which a majority of lawmakers discuss policy positions

before public debates. Others have restrictions on taking photos and videos of legislative proceedings. In some places, lawmakers have no obligation to disclose personal financial information that could reveal conflicts of interest.

Legislators possess the power to change that but are sometimes reluctant to act.

A bill advancing this year in Massachusetts, for example, would strengthen the state's public-records laws by limiting fees and setting new deadlines for state agencies and municipalities to comply. Yet it would continue to exempt lawmakers.

That mirrors the way things work in Washington, D.C. Congress exempted itself when it passed the national Freedom of Information Act 50 years ago. The president and his immediate staff also are exempt. By contrast, many governors are subject to state sunshine laws.

In many states, the public-records requirements passed by lawmakers present "a stunning contradiction," said Charles Davis, dean of the College of Journalism and Mass Communication at the University of Georgia and a former executive director of the National Freedom of Information Coalition.

"I have just always found it astonishing that they would put those requirements on public officials throughout government and exempt themselves at the same time," he said.

To gauge compliance with public-records laws, the AP sent requests to the top Democratic and Republican lawmakers in all states and most governors seeking copies of their daily schedules and emails from their government accounts for the week of Feb. 1 to Feb. 7. Of the more than 170 lawmakers who responded by mid-March, a majority denied the requests by claiming they were legally exempt. The governors were slower to respond but more often provided the information.

The legislative denials came from lawmakers of both parties, although slightly more from Republicans. In states where some lawmakers said "yes" and others "no," it was more often the majority party lawmakers who denied the requests while a minority party leader complied.

In Missouri, Senate President Pro Tem Ron Richard was asked in front of dozens of reporters and editors whether he would release his government emails and daily calendars.

"All you have to do is ask for it, and I'll give it to you. I don't care," Richard told those attending a statewide press association event in February.

Yet when the AP subsequently submitted an open-records request, Richard reversed course. A Senate administrator responded on his behalf with a letter saying that individual lawmakers aren't subject to the Missouri Sunshine Law. Richard, who is in his first year as the Senate's top lawmaker, explained that he learned his predecessors had determined they were exempt, and he didn't want to break with precedent.

"I'm telling you I don't hide anything in my emails. I just don't do that," said Richard, a Republican from Joplin.

Mississippi House Speaker Philip Gunn responded with a denial letter asserting his emails and calendars were his personal property, not subject to the Mississippi Public Records Act and protected "under the doctrine of legislative immunity" dating back hundreds of years to English common law.

Denial letters on behalf of Illinois' top Democratic and Republican lawmakers said, among other things, that releasing the records could amount to a "clearly unwarranted invasion of personal privacy" for individuals who contacted lawmakers without expecting their names to appear in the news media.

An attorney for Kentucky's legislature said secrecy was needed

“to encourage effective and frank communications.”

“Arranging honors for our fallen heroes, seeking options for Kentuckians with substance abuse problems or counseling citizens regarding confidential problems are all in a day’s work for our members,” wrote Kentucky legislative general counsel Morgain Sprague. “These communications have always been protected by law.”

If lawmakers followed the same open-records rules that apply to others in government, the potential for some sensitive content being revealed would not be a reason for denying access to all of their emails. Rather, they could redact or withhold particular emails covered by various sunshine law exceptions while releasing the rest.

In several states, lawmakers who provided their records did withhold certain emails that they considered to be exempt from disclosure.

Texas Lt. Gov. Dan Patrick, who is the Republican head of the Senate, released 48 pages of emails but withheld the rest pending a request for a state attorney general’s opinion on whether confidential communications between elected officials and citizens are shielded from disclosure.

New Mexico lawmakers released hundreds of emails, mainly from constituents, but withheld three under an exemption for correspondence with certain legislative staff. They also released copies of their daily calendars showing breakfasts and dinners sponsored by industry and interest groups.

Lawmakers in Florida, which has one of the more expansive sunshine laws, freely released emails from people urging them to support or oppose particular bills. They also released calendars showing meetings with lobbyists for dentists, hospitals, teachers, the aerospace industry and others. The schedule for House Minority Leader Mark Pafford even included his morning exercise time and his flight itinerary for a trip

to Washington, D.C.

“This is the people’s government. If somebody finds out I’m doing a workout or having a doctor’s appointment at a certain time, that’s OK,” said Pafford, a Democrat from West Palm Beach.

In Alaska, three of the top four lawmakers declined the AP’s request, explaining that their records can be kept confidential under the state constitution and “the deliberative process privilege.” But Senate President Kevin Meyer, a Republican from Anchorage, provided his calendar and let an AP reporter look at his email inbox as an aide scrolled through it.

Open-records advocates said such case-by-case allowances ultimately leave it to the whims of whoever is in power to decide what the public can see.

“The problem with that is that’s just an act of legislative mercy,” said Davis, of the University of Georgia, “and tomorrow they might have an absolutely identical document that they decide not to give you, because you have no legal right to it.”

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