

Editor's Note: Enduring Darkness for Sunlight

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As we enter this dark season of winter, civic information champions can still prepare for the light of spring.

I am talking about the impending state legislative sessions, to launch in January in statehouses throughout the United States, where open-government advocates work frenetically to quash exemptions and hold back the tide of secrecy. Meanwhile, in the courts, those who would intimidate requesters through reverse-FOI litigation arm their attorneys for what essentially amount to Strategic Lawsuits Against Public Participation (SLAPP). Yet, there is light ahead. Hope, even.

This second issue of *The Journal of Civic Information* highlights critical threats to government transparency today, but also provides beacons of hope for those who otherwise would be deterred.

The first article, by Patrick C. File and Leah Wigren of the University of Nevada-Reno, focuses on an increasingly used tactic applied by those who wish to keep civic information locked away: reverse-FOI lawsuits. The system already is stacked against the citizen, but some government agencies have the gall to sue records requesters, forcing average people to hire attorneys to defend themselves for simply asking to see what their government is up to. File and Wigren examine the 31 state anti-SLAPP laws to find that many protect citizens from such brute-force anti-transparency tactics. While not a panacea, anti-SLAPP laws could help in pushing back. More, however, is needed. The article earned the third-place award in the National Freedom of Information Coalition's first blind-reviewed FOI research competition in April 2019.

Next, Ryan Mulvey and James Valvo, legal counsel at the Cause of Action Institute, take a deep-dive analysis into how state public record laws apply to legislatures. Many people assume legislatures – like Congress – conveniently exempted themselves from the very public record laws they impose on the executive branch. Not so! In fact, Mulvey and Valvo found that thirty-eight states have adopted FOI statutes that permit requesters to access legislative records at some level, and of those, twenty-four states' laws plainly and explicitly cover their legislatures. Some state laws focus on the nature of the record, others the nature of the agency. Some access is implied, and some interpreted by the courts. Only twelve states specifically exclude their legislatures from their public record laws. Mulvey and Valvo explain the statutes, the nuances, the case law, and then lay out each state in tables for easy scanning and comparison, an invaluable tool for anyone who follows or cares about state politics.

The third article, by Rutgers University public administration doctoral student Kayla Schwoerer, provides a fascinating look at #FOIA tweets through social network analysis. She found that tweets soar in March during national Sunshine Week, indicating that the 15-year-old advocacy event drives public dialogue about government transparency. She discovered the power tweeters, such as MuckRock and the Reporters Committee for Freedom of the Press, who adeptly drive much of the FOIA social media traffic through videos, photos, and links to their websites – a good lesson for any organization seeking exposure and impact. She also found that while journalists create much of the content, average citizens respond in enormous numbers when engaged. This groundbreaking research opens new avenues for examining how journalists, advocates, public officials, and average people can better converse about civic engagement and government accountability, and how to maximize that discussion’s scope and reach.

All three articles provide hope for the spring. Legislatures in most states can be held accountable by the same laws they apply to executive agencies and local jurisdictions. Anti-SLAPP laws can provide relief in some states for requesters who face being hauled to court by government for simply submitting a public records request. And, this March, Sunshine Week will once again infuse energy and vigor into the American dialogue in support of open government and civic information.

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