

## Editor's Note Fences Make for Bad Government

David Cuillier, Ph.D., Editor, *University of Arizona*

Sometimes a property owner will install a fence on a neighbor's land, accidentally or otherwise, and then eventually, over time, legally claim the land as theirs. In property law it's called "adverse possession" or "squatter's rights" – when that encroachment is open to the world and hostile to the interests of the true owner.

The same thing can happen to public information, as discovered by the citizens of Washington state.

This tale of information adverse possession – a warning to residents of all states – began in 1972, after the Washington state electorate overwhelmingly approved Initiative 276, which included a section dictating that all of government's records shall be open to citizen inspection. About 15 years ago, while in graduate school at Washington State University, I interviewed the initiative organizers and opponents, and they told me that at the time everyone knew the law covered all three branches of government – executive, judicial, and legislative.

"It applied to everyone. Absolutely," said Bennett Feigenbaum, who led the Coalition for Open Government that spearheaded the initiative. "It didn't really have to come up and be discussed because it was assumed."<sup>1</sup>

Yet, the Legislature gradually staked out a position over time that it was not subject to the public records law, and that fence went unchallenged for years, brashly open to the world and hostile to the interests of the true owners, the public.

In 2017 that all changed. Journalists challenged the Legislature's boundary on public records and prevailed in court and in the court of public opinion, culminating in a state Supreme Court ruling last December.

Peggy Watt, an associate professor at Western Washington University, recounts that battle in this issue of the *Journal of Civic Information*, providing key takeaway points for legislators and transparency advocates everywhere: We do not have to accept walls built to hide information.

Tear. Down. The wall.

---

<sup>1</sup> David Cuillier, David Dean, and Susan Dente Ross (May 4, 2004). "History of Initiative 276: The genesis of the Washington Public Disclosure Act." AccessNorthwest, Washington State University (document available at [bit.ly/Initiative276](http://bit.ly/Initiative276))

Throughout the nation, public agencies often erect such barriers, even in contradiction of the law. Sometimes it's simply agency "policy," or just "how it's done." The longer that barrier is allowed to stand the stronger it gets, the more cemented their argument for adverse possession. We must all keep vigilant to eradicate such encroachments on the people's right to know.

Similarly, some of those barriers are imposed on the frontlines – at the agency countertops – by usually well-meaning public records officers.

In this issue, Brett G. Johnson, an assistant professor at the University of Missouri, presents findings from an exploratory survey of state and federal public records officers to find out what they think of journalists and how the records dissemination system works. Turns out many of them feel stuck in the middle, between requester and agency leaders, and that public records dissemination is given little emphasis or support in government.

The study supports previous research by Michele Bush Kimball, Suzanne Piotrowski and others, who have found that custodians are often supportive of transparency but that the process can be arbitrary and messy. Every journalist should read Johnson's findings to see just how they are perceived from the other side of the counter (spoiler alert: not very well!).

Johnson provides practical suggestions for record custodians and requesters to help the system go a little smoother. After all, this is a people process, and people are complicated. The better custodians and requesters understand each other the better the information will flow.

Of course, given the current spread of coronavirus throughout the world, access to free, unfettered, truthful information is more important than ever. Journal Publisher Frank LoMonte, who directs the Brechner Center for Freedom of Information at the University of Florida, provides a thoughtful essay examining the extensive actions by government to become more secretive because of the pandemic. He provides a convincing argument that government should become more transparent, not less, during these times.

Ultimately, people crave accurate information that will help them understand the health risks they face, and take appropriate precautions to protect themselves and their loved ones.

More than ever, this is not the time for excessive secrecy and obfuscation.

This is not the time for arbitrary denials.

This is not the time for fences.

DOI: <https://doi.org/10.32473/joci.v2i1.121551>

\* Please send correspondence about this article to David Cuillier, University of Arizona, [cuillier@arizona.edu](mailto:cuillier@arizona.edu). This work is licensed under the Creative Commons Attribution-NonCommercial 3.0 United States License. To view a copy of this license, visit <http://creativecommons.org/licenses/by-nc/3.0/us/> or send a letter to Creative Commons, PO Box 1866 Mountain View, CA 94042, USA.