

Editor's Note

Retaining Control Over the Instruments we Created

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Someone needs to police the police.

Protests throughout the United States this year sent a message to those in power that a large proportion of citizens are unhappy with their government. Citizen commissions and inspectors general are not enough.

It is up to those who created those agencies, and to those who oversee them.

Us.

In the early 1970s, Common Cause and others pushed for model state public record laws throughout the country, which is why so many statutes share this similar prologue:

“The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”¹

The articles in this issue of the *Journal of Civic Information* focus on the people's oversight – through public record laws – over critical institutions that affect everyday lives, including the police.

Josh Moore, a program attorney at the [Reporters Committee for Freedom of the Press](#), offers an effective legal argument, applying a functional test, for why police employed by private universities should be subject to public records laws in the same way as their brethren in blue in the public sector.

This isn't a new area for Moore, a former journalist who served as a legal intern with the [Student Press Law Center](#),² among other places. This is the same nonprofit that has produced such valuable guides as the [Clery Act Guide](#), [Covering Campus Crime](#) and [Covering Protests](#). Moore now works for an organization that has recently issued a new guide, [Police, Protesters, and the Press](#), and has long tracked local policies on access to [police body camera video](#).

We know that accessing public records from public police departments can be challenging, but try to get a police report from a private university. Not easy.

¹ See, for example, prologues to the public records laws enacted in Texas, California, West Virginia, and Washington state.

² In full disclosure, the publisher of this journal, Frank LoMonte, served as executive director of the Student Press Law Center 2008-2017.

Yet, those officers often have the same powers of arrest and use of force, and can detain, jail and assault anyone within their sphere of influence, student or not. It's that power that has so many groups demanding transparency, not just this year, but [for some time](#). Private university police are functionally acting in the same capacity as those at public universities. They should not be able to hide in the shadows.

Police departments are not the only agencies that require transparency oversight.

The second article in this issue is an analysis by two Canadian researchers of FOI audits conducted in the United States, Canada, and throughout the rest of the world. Kevin Walby, from the criminal justice discipline, and Jeff Yaremko, an independent researcher, review 29 audits conducted for more than 20 years to show the power they have to hold agencies accountable and effect change.

Many readers of this journal have been involved in such audits, where journalists, advocates or “average Joes” fan out to request specific records of agencies within a specific geographical region. They record the results, and then explain to the public what they found, often reporting fees charged, time it took for agencies to respond, and the percentage of agencies that provided the records as requested.

The two authors conclude that audits often result in reform and increased transparency. They also note that audits incorporating a diversity of constituents can be very effective. They lay out six recommendations for those considering audits in the future.

This form of citizen oversight might be one of our last hopes if we wish to hold onto some semblance of government transparency. Public record statutes that include criminal penalties are rarely enforced. Miniscule civil fines are meaningless. Most independent records commissions and ombudsman offices have no teeth. Many public officials know they can ignore the law and get away with it, and an eviscerated legacy media is less likely to sue than it was just 10 years ago.

That is why, if we truly embrace a strong civic information culture, we need to explore other forms of government oversight, including FOI audits, nonprofit advocacy, and public education. Yes, we should continue to work on improving the laws, but attention also should focus on rebuilding our collective civic psyche, so that we may remain in control of those instruments we have created.

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