

## **With Mass. public records law in tatters, it's time for reform**

This week, the Boston Globe stands with the Patriot Ledger, the Boston Herald, and all of GateHouse Media Massachusetts in an unprecedented, coordinated condemnation of Secretary of State William Galvin's rulings on the state's public records law.

When an ordinary citizen requests basic government records in Massachusetts, he or she often faces frustrating delays and opacity. The Commonwealth has remained notoriously weak in providing public records, since the laws governing them are essentially toothless, and thus easily ignored.

Recent rulings, however, have made a bad situation intolerably worse. By interpreting regulations governing the privacy of criminal records too broadly, Secretary of State William Galvin's office has established the police as the arbiters and censors of arrest records. In one recent case described in a story this week by Globe reporter Todd Wallack, Galvin's office ruled that Boston police can withhold the names of five police officers who were caught driving drunk.

In an era when the public trust in government and law enforcement has been dulled by a lack of transparency — take the damning case of the Ferguson Police Department, or the Hillary Clinton personal e-mail account saga — fixing the Massachusetts public records law is a must.

Another misguided ruling came after the Globe challenged State Police for withholding the arrest record of one of its troopers. The state's supervisor of public records, Shawn Williams, ruled in favor of the police, finding that police had "the discretion to withhold records" that were covered under rules meant to protect criminal rap sheets from being misused; such discretion meant that the Globe could not obtain the names of the five Massachusetts police officers charged with drunken driving. A far more rational interpretation of the criminal-records rule would protect information about criminal proceedings, not the arrest records themselves. After all, the criminal-records law was never intended to open up a memory hole to conceal unflattering information about the police. Massachusetts needs a fair, uniform system for sharing records, not an arbitrary one that allows the arrest records for civilians charged with drunken driving to be made available but not those in law enforcement.

But overturning the recent ruling won't be nearly enough. More broadly, what the Commonwealth needs is an overhaul of its public records laws to make access easier and allow for clear, decisive enforcement. A Globe review of public records requests last fall found government to be generally slow and uncooperative. The State Integrity Investigation, a project of the Center for Public Integrity, gave Massachusetts an F in public access to information. The state's law governing open records has not been updated in a major way since the early 1970s and is riddled with broad holes and exemptions. The Massachusetts Legislature and the judicial branch's administrative offices, for example, are exempt from the public records law.

State Representative Peter Kocot of Northampton and state Senator Jason Lewis of Winchester have filed legislation that would substantially improve the public records law. Their proposal tackles the biggest roadblocks encountered by Massachusetts journalists, concerned residents, and other members of the public with the right to know how the government conducts business.

Costly records are one major deterrent. Public agencies routinely charge large fees in order to release information. In one infamous case almost five years ago, the Boston Redevelopment Authority wanted \$47,000 for records about city employees and their relatives who won the affordable housing lottery. The proposed legislation would cap fees for copying documents at 5 cents per letter-size page and 7 cents per legal-size page.

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Another hole in the law is that the process to request public records is not streamlined in most government agencies. Typically, there isn't a designated person to handle such requests. This means that inquiries often take months. The bill would require all state agencies to have one or more "records access officers." It would also require agencies to provide electronic records in digital and searchable format. Often, records are provided on paper — with its pricey copying fees — even when they exist electronically.

One of the most damaging weakness of the Massachusetts law is that agencies can deny a public records request without consequences. According to the ACLU in Massachusetts, under federal FOIA law and in 46 other states, when an agency blocks access to public information and the party requesting the records successfully sues the government, courts allow

plaintiffs to collect attorneys' fees. But not in Massachusetts. Kocot's legislation would correct that shortcoming and offer that legal remedy to public information seekers who are stonewalled by the government.

Sunday marks the start of Sunshine Week, a national celebration born in Florida 13 years ago to promote open government. It's a good reminder that public records are not only a good thing in the abstract. Transparency brings accountability, and, often, meaningful reform. It's a tool that every citizen should want — but one that citizens of Massachusetts still too often can't rely on.

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