

SUNSHINE WEEK YOUR RIGHT TO KNOW.



Governments delay access to public records during pandemic

Information held back for months, as public needs timely information on leaders' decisions

David A. Lieb
ASSOCIATED PRESS

As states prepared to reopen their economies following coronavirus shutdowns last spring, The Associated Press asked governors across the U.S. for records that could shed light on how businesses and health officials influenced their decisions.

Nine months later, after several more COVID-19 surges and shutdowns, the AP still has not received records from about 20 states. Some outright denied the requests or sought payments the AP declined to make. Others have not responded, or said they still need more time.

Public records have become harder to get since the world was upended by the pandemic a year ago. Governors, legislatures and local officials have suspended or ignored laws setting deadlines to respond to records requests. They cited obstacles for staffers who are working at home or are overwhelmed with crisis management.

The result is that information that once took a few days or weeks to obtain now often takes months – depriving the public of timely facts about decisions their leaders are making.

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About Sunshine Week

Sunshine Week was launched in 2005 by the American Society of News Editors — now News Leaders Association — and has grown into an enduring initiative to promote open government.

Sunshine Week this year is March 14-20. Attend a panel discussion and learn more about how you can get involved at newsleaders.org/sunshine-week-about

MERRY ECCLES/
USA TODAY NETWORK;
GETTY IMAGES

Wisconsin legislators drew voting maps in secret 10 years ago. That should change.

Matthew DeFour
Wisconsin Freedom of Information Council

Wisconsin lawmakers will soon begin redrawing congressional and state voting boundaries, in accordance with the latest Census, so it's a good time to reflect on how that process has played out before — and for the public to demand greater transparency.

The last round of redistricting in 2011 offers a good example of how *not* to do things.

In July of that year, Wisconsin's Republican-controlled Legislature released new legislative district maps on a Friday, held a single public hearing in Madison five days later, and passed the maps a week after that. Republican Gov. Scott Walker signed the new maps into law a month after they became public.

It was the first time since the 1950s that a single party had complete control of the process, and it allowed Republicans to cement control of the Legislature for a decade — even in 2018, when Democrats won every statewide election.

As later court cases and news reporting uncovered, the mapmaking process was an affront to the state's tradition of open

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'WHAT IF WE ARE WRONG?'



U.S. President Donald Trump removes his mask upon return to the White House from Walter Reed National Military Medical Center on Oct. 5, 2020 in Washington, D.C. WIN MCNAMEE/TNS

Humility was missing as coronavirus raged across the U.S.

Your Turn
Ralph Weber
Guest columnist

On Sept. 28, 1918, 200,000 people jammed Philadelphia's streets to enjoy the Liberty Loan Drive Parade. We know that a "deluge of death" from influenza followed, but fewer know about the decision that came before the parade.

Flu outbreaks had hit a Kansas army base in March 1918, influenza then roared throughout Europe. A Boston military parade on Sept. 3 spread the flu throughout New England. Two days before the Phil-

adelphia parade was to begin, flu outbreaks consumed nearby army camps in New Jersey and Maryland.

Against this backdrop, Philadelphia officials faced this question on Sept. 27: Does the parade proceed tomorrow? Under pressure to meet bond quotas and hoping to avoid public panic, they let the parade go forward.

Three days later every Philadelphia hospital bed was filled; thousands died within a week.

This is just one of many critical decisions that history recognizes as tragic.

In the early morning hours of Dec. 7, 1941, radar operators in Hawaii saw on their screen what

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IDEASLAB

Information

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“The pandemic rages on, but investigative journalism doesn’t halt. The public’s right to know doesn’t cease to exist,” said Gunita Singh, a legal fellow at the Reporters Committee for Freedom of the Press, which has tracked nationwide delays in responding to public records requests.

“Having these unnecessary measures in place that hinder open government sets a terrible precedent,” Singh said.

U.S. states and local governments are far from alone in their deferrals and delays. Dozens of countries suspended or altered their right-to-information policies last year while citing the pandemic, according to a joint tracking effort by the Centre for Law and Democracy and Access Info Europe.

Open-government advocates have started to worry about potential long-lasting effects.

The pandemic could “give cover for emergency measures to come into force that could then over time become permanent,” said Joe Powell, deputy CEO of the Open Government Partnership, a Washington, D.C.-based nonprofit that works with governments in 78 countries, including the U.S., to promote transparency and public participation.

Even before the pandemic, some government agencies routinely blew past their own deadlines for responding to public records requests. But the number of such cases has grown over the past year, according to AP interviews with government watchdog groups.

New data indicates there has been both a higher demand for government information during the pandemic and longer waits to obtain it.

State, county and city governments experienced a sixfold increase in their time spent on public records requests last year, rising from an average of 346 hours in the first quarter to 2,121 hours by the last quarter, according to an analysis by GovQA, a company that provides cloud-based software to manage public records requests.

That surge was driven by both the volume and complexity of requests. After shutdowns led to a dip in records requests accepted by government agencies from April to June, the number of requests shot up by 23% over the rest of the year, according to the GovQA data.

Processing delays were exacerbated by remote work, outdated public-records laws, underfunded budgets and increased oversight from top administrators wanting to review potentially sensitive data before it was released, said GovQA spokesperson Jen Snyder.

The AP last May sought copies of communications about the coronavirus between governors’ offices, state health directors and groups representing businesses, health care providers and local governments. By August, the AP had received records from about one-third of the states, revealing that some governors had allowed businesses to help write the reopening rules affecting their own industries.

The AP still has requests pending in



Keri Mitchell, executive editor of the Dallas Free Press, submitted records requests to the Dallas school district that took months to resolve because of the pandemic. LM OTERO/AP

Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, New York and Texas.

After months of repeated AP inquiries, Ohio Gov. Mike DeWine’s office on March 3 released just two documents from last spring – one from a hospital association proposing criteria for resuming elective procedures, the other from a mayor’s group about guidelines for opening swimming pools and camps. A spokesperson for the Republican governor apologized for the delay, citing “human error” for a breakdown of staff communication.

Delaware Gov. John Carney was one of several chief executives who initially suspended the state’s response deadline for public records requests during the coronavirus emergency. With no end to the pandemic in sight, the Democratic governor reversed course and lifted the suspension in September.

But Carney’s administration did not fulfill the AP’s request until Feb. 10, when it provided 109 pages of documents and a note more could come later. Though most were merely press clippings, the records included emails from representatives of car dealers, home builders and other industries seeking to keep operating during a shutdown.

More than a half-dozen states – Connecticut, Hawaii, Indiana, Mississippi, New Hampshire, Rhode Island and Washington – continue to suspend some open-records requirements through gubernatorial orders, according to an AP review of public-records policies.

Hawaii Gov. David Ige, a Democrat, took the most sweeping action when he suspended the state’s entire open-records law in March 2020. Ige eased the suspension under pressure from open-government advocates. But his most recent order, issued in February, still allows deadlines to be suspended if hard copies of documents are inaccessible, staff are backlogged with other requests or a response would pull agency employees away from other COVID-19 work.

Some state legislatures also relaxed response deadlines for records requests during the pandemic.

The Missouri House in February overwhelmingly passed legislation that



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would suspend response requirements whenever governmental bodies are closed for extended periods. That bill is now in the Senate.

By contrast, Pennsylvania lawmakers pushed for quicker responses. After the state’s open-records office advised that days when public offices are closed don’t count toward response deadlines, the Republican-led Legislature passed a law prohibiting Democratic Gov. Tom Wolf’s administration from ignoring or suspending records requests during disaster emergencies.

Some local governments also have rolled back records law suspensions.

Last April, Virginia’s Albemarle County, which surrounds Charlottesville, extended indefinitely the deadlines to respond to records requests. The county board later softened that stance before finally repealing the extension in November – a move that came shortly after state Attorney General Mark Herring, a Democrat, said state law does not allow local governments to modify such deadlines.

Albemarle County spokesperson Emily Kilroy said the timing of the repeal was merely coincidental.

“The ordinance was not intended to get out of the responsibilities that we

have under the Freedom of Information Act,” she said. “It was really in response to the pandemic.”

The Dallas Independent School District suspended all records requests for seven months while its employees were working from home with laptop computers. Staff likely could have processed some requests for electronic records. But because the legal team was unable to access other records stored in offices, it chose not to process any requests “in order for everyone to be on the same playing field,” district spokesperson Robyn Harris said.

When staff returned to in-person work on Oct. 7, the school district had a backlog of 424 records requests, she said.

Among those was a July 7 request from Keri Mitchell, executive director of the Dallas Free Press, seeking information about internet hot spots provided for students’ families during the previous school year. By the time she finally received the information, Mitchell had moved on to other news stories.

“If we can’t get timely responses to open-records requests, we can’t get people actual answers,” she said. “It just creates another barrier to the information people need to literally survive.”

Maps

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government.

The maps were drawn in a closely guarded “map room” in a law firm across the street from the Capitol. Only Republicans were allowed in to see the new maps, and only if they signed non-disclosure agreements.

When Democrats briefly took the majority in 2012, they demanded to see the redistricting records that had been hidden from them. Looking at the map-makers’ computers, they found that hundreds of thousands of documents had been deleted and one hard drive had been damaged.

Still, records recovered from the hard drives (it turns out deleting files doesn’t always destroy them) showed with each map draft, Republicans were tweaking them to be more and more politically advantageous. The Republicans were deliberately trying to pack Democrats into fewer districts to help Republicans win more seats.

Whether or not you like politicians picking their voters (and the passage of referendums or resolutions in 56 counties across the state calling for non-

partisan redistricting suggest most voters don’t), the public should want a more transparent process than what happened in 2011.

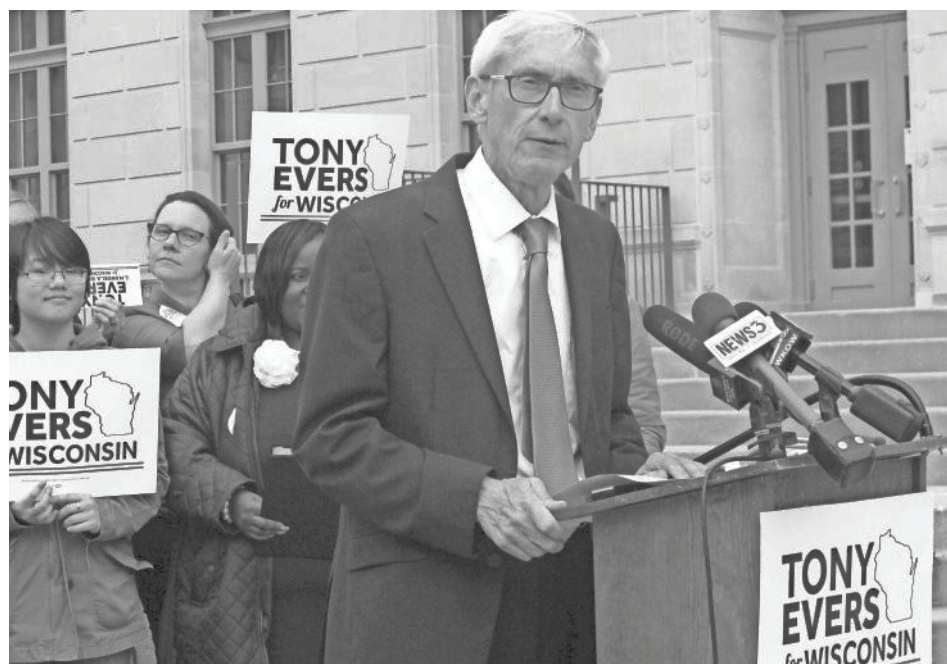
Democratic Gov. Tony Evers’ budget proposal calls for retaining all legislative redistricting records for 10 years and making sure all legislative redistricting meetings comply with the open meetings law. That would be a good start for building more confidence in the redistricting process.

Yet there is every indication that Republicans will try to keep the process as opaque as possible while doing everything they can to draw maps for their own partisan advantage.

Recent reporting revealed that Republicans are planning to spend upwards of \$1 million of taxpayer money on outside lawyers on redistricting lawsuits. The 2011 redistricting litigation cost taxpayers at least \$3.5 million, according to the Milwaukee Journal Sentinel.

With such a high price tag, it’s important to reiterate the conclusion the three judges, including two Republican appointees, reached in the 2011 litigation in which they blasted the “peculiarly furtive process adopted by the majority party.”

Aptly, they added: “The people of



Democratic candidate for governor Tony Evers proposes a host of good-government measures in Madison in September, including creating a nonpartisan redistricting commission. SCOTT BAUER, ASSOCIATED PRESS

Wisconsin deserve better in the next round of redistricting after the 2020 census.”

Your Right to Know is a monthly column distributed by the Wisconsin Free-

dom of Information Council (wisfoic.org), a group dedicated to open government. Matthew DeFour, a council member, is state politics editor for the Wisconsin State Journal.