

**FREEDOM OF INFORMATION TESTIMONY**

**JOINT COMMITTEE ON GOVERNMENT REFORM**

**FEBRUARY 18, 2009**

**THANK YOU LADIES AND GENTLEMEN OF THE JOINT COMMITTEE FOR INVITING ME TO TESTIFY ABOUT THE ILLINOIS FREEDOM OF INFORMATION ACT. MY NAME IS DAVE BENNETT. I AM THE EXECUTIVE DIRECTOR OF THE ILLINOIS PRESS ASSOCIATION. WE REPRESENT ALL OF THE 600 OR SO DAILY AND WEEKLY NEWSPAPERS IN THE STATE OF ILLINOIS.**

**I KNOW YOUR SCHEDULE IS FULL AND YOU HAVE A NUMBER OF WITNESSES TO ACCOMMODATE. SO, I WILL MAKE JUST A FEW BRIEF, BROAD POINTS AND THEN ANSWER ANY QUESTIONS YOU MAY HAVE.**

## **OVERVIEW**

**FIRST, LET ME SAY THAT ANY GOVERNMENTAL REFORM MOVEMENT MUST BE ACCOMPANIED BY STRONG, ENFORCEABLE LAWS THAT ENSURE TRANSPARENCY. WITHOUT TRANSPARENCY AND THE VISIBLE MEANS TO ENSURE TRANSPARENCY, ANY RHETORIC ABOUT GOVERNMENTAL REFORM IS JUST A PROLOGUE TO A FARCE.**

**IN MY BUSINESS, WE CALL THESE “SUNSHINE LAWS.” THESE LAWS HELP TO PROTECT THE RIGHTS OF ALL ILLINOIS CITIZENS TO HAVE ACCESS TO INFORMATION ABOUT WHAT THEIR GOVERNMENT DOES AND HOW IT DOES IT.**

**THAT TRANSLATES INTO THE NEED FOR A STRONG FREEDOM OF INFORMATION LAW THAT PROVIDES THE FOUNDATION FOR EXAMINING WHETHER GOVERNMENT IS DOING THE RIGHT THING AND THAT IT IS BEING WATCHED BY THE PEOPLE WHO ELECTED THEM.**

**HAVING SAID THAT, I WANT TO BE CLEAR FROM THE OUTSET THAT I DO NOT BELIEVE ILLINOIS' FOIA IS WORTH THE COST OF A SMALL FIRE IT WOULD TAKE TO BURN IT.**

- **IT DOESN'T PROVIDE MUCH TRANSPARENCY;**
- **IT DOESN'T HELP THE PEOPLE KNOW WHAT THEIR GOVERNMENT UNITS ARE DOING AND HOW THEY ARE DOING IT;**

- **AND, IF IT ISN'T CHANGED SIGNIFICANTLY, IT WILL END UP BEING THE INSTRUMENTS USED TO AVOID ACCOUNTABILITY IN ANY REFORM MOVEMENT.....JUST LIKE IT IS BEING USED TODAY AND HAS BEEN USED FOR MANY YEARS.**

**SO WHAT NEEDS TO BE DONE TO FIX THE FREEDOM OF INFORMATION ACT?**

**FIRST: THE ENTIRE THE BASIC UNDERLYING STRUCTURE IS FLAWED**

- **THE CURRENT LAW PUTS THE ENTIRE BURDEN ON THE REQUESTORS OF INFORMATION TO DEMONSTRATE WHY THEY SHOULD BE GIVEN PUBLIC INFORMATION DOCUMENTS.**

- **IT DOES NOT REQUIRE PUBLIC OFFICIALS TO DEMONSTRATE WHY INFORMATION IS WITHHELD WHEN THEY DO IT. NOR DOES IT COMPEL THEM TO THINK FIRST ABOUT PROVIDING INFORMATION AND DENYING INFORMATION SECOND. TO THE CONTRARY, TOO OFTEN THE REVERSE IS THE CASE.**
- **THE LAW IS PROLIFERATED WITH MORE EXCEPTIONS THAT ARE DESIGNED TO DENY ACCESS TO INFORMATION THAN EXISTS IN NEARLY EVERY OTHER STATE'S FOIA LAW. CONSEQUENTLY, IT ALLOWS PUBLIC OFFICIALS WHO EITHER DON'T WISH TO GIVE OUT INFORMATION, OR WHO ARE IGNORANT ABOUT WHETHER THEY SHOULD GIVE OUT INFORMATION TO HIDE BEHIND AN ENDLESS LITANY OF BUILT-IN EXCUSES TO STONEWALL ACCESS RATHER THAN GIVE IT OUT.**
- **THIS IS A FUNDAMENTAL FLAW IN THE LAW THAT MUST BE CHANGED.**

- **THE PRACTICAL CONSEQUENCE OF THIS FLAW IS THAT ACCESS IS FREQUENTLY DENIED, FORCING REQUESTORS TO DECIDE ONE OF TWO COURSES OF ACTION: A) GO AWAY GRUMBLING; OR B) GO TO COURT TO FIGHT THROUGH WEEKS OR MONTHS OF EXPENSIVE COURT AND ATTORNEYS' FEES.**
  
- **MOST MERE MORTALS CAN'T AFFORD TO DO THAT.**

**SECOND: THE PROCESS IS SLOW, CUMBERSOME AND DESIGNED TO DENY ACCESS TO INFORMATION.**

- **THERE IS NO BUILT-IN MANDATE TO COMPLY QUICKLY WITH REQUESTS, OR AT ALL FOR THAT MATTER.**
  
- **THE TIME PERIODS ARE MUCH TOO LONG BETWEEN STEPS IN THE APPEAL PROCESS.**

- **THERE IS NO FEAR THAT NEEDLESSLY DRAGGING THE REQUESTOR THROUGH AN ENDLESS SERIES OF APPEALS STEPS MAY RESULT IN SOME FORM OF SANCTION OR PENALTY FOR THE PUBLIC BODY.**
  
- **IN SHORT, THE PROCESS BY ITS VERY NATURE ENCOURAGES FILIBUSTERING TRANSPARENCY.**

**THIRD: THE LAW HAS NO MEANINGFUL ENFORCEMENT MECHANISM.**

- **THERE IS NO FEAR FACTOR IN THE CURRENT LAW. BY THAT I MEAN, THERE IS NO REASON FOR SOMEONE TO COMPLY WITH IT OUT OF CONCERN THAT THEY WILL BE PUNISHED OR EMBARRASSED IF THEY DON'T.**

- **IT MAY BE A SAD COMMENTARY, BUT THE REALITY IS THAT NO LAW IS VERY WORKABLE UNLESS THE ONES WHO VIOLATE IT FEAR THE CONSEQUENCES OF NOT OBEYING IT.**
- **IT DOES NOT MATTER WHETHER WE ARE TRYING TO MAKE THE ENVIRONMENT CLEANER; TRYING TO BRING DEAD-BEAT DADS TO ACCOUNT; TRYING TO MAKE OUR STREETS SAFER FROM DRUNKEN DRIVERS; OR, IN THIS CASE, TRYING TO MAKE TRANSPARENCY IN GOVERNMENT MORE WORKABLE.....IN ALL LAWS THERE MUST BE TEETH BUILT IN, OR THEY WILL BE IGNORED.**
- **CURRENT FOIA LAW IS A TOOTHLESS TIGER.**

**FOURTH, AND LAST: THERE NEEDS TO BE MORE SUPPORT FOR THE THIRD-PARTY INDEPENDENT REVIEW PROCESS CURRENTLY IN PLACE.**

- **WHEN LISA MADIGAN WAS FIRST ELECTED ATTORNEY GENERAL, SHE ESTABLISHED A NEW POSITION CALLED PUBLIC ACCESS COUNSEL. THIS OFFICE PROVIDES AN INDEPENDENT RESOURCE FOR CITIZENS WHO REQUEST INFORMATION FROM GOVERNMENT BUT ARE UNABLE TO GET WHAT THEY NEED.**
- **IN THE YEARS SINCE, THE PUBLIC ACCESS COUNSEL HAS BEEN ABLE TO INTERCEDE IN THOUSANDS OF FOIA AND OPEN MEETINGS DISPUTES INVOLVING CITIZENS, LOCAL GOVERNMENT UNITS AND THE NEWS MEDIA.**
- **IT HAS BECOME AN EFFECTIVE TOOL FOR PROVIDING AN INTERMEDIARY VOICE TO RESOLVE CONFLICTS AND PROVIDE QUICK ANSWERS AS TO WHAT KINDS OF INFORMATION SHOULD BE RELEASED OR WHAT KIND OF MEETING PROCEDURES SHOULD BE OPEN TO THE PUBLIC.**
- **BUT, IT HAS TWO BIG LIMITATIONS:**

- 1) **IT ISN'T PERMANENT. WHAT HAPPENS IF LISA MADIGAN LEAVES THE ATTORNEY GENERAL POST? WHAT WILL HER SUCCESSOR DO WITH THE ACCESS COUNSEL OFFICE? WILL IT DIE FROM LACK OF ENTHUSIASM OR FUNDING UNDER A NEW LEADER WHO MAY OR MAY NOT HAVE THE SAME COMMITMENT TO TRANSPARENCY IN GOVERNMENT?**
  
- 2) **SECOND, IT DOES NOT HAVE THE CLOUT IT NEEDS TO ENFORCE STRICT COMPLIANCE WITH THE LAW. TOO OFTEN, THE ACCESS COUNSEL HAS ISSUED ADVISORY OPINIONS, ONLY TO HAVE LOCAL GOVERNMENT UNITS THUMB THEIR NOSES AT IT AND DENY ACCESS ANYWAY.**

- **SO, THIS WORTHWHILE OFFICE THAT SERVES AS A TRUE CITIZEN'S ADVOCATE SHOULD BE MADE PERMANENT BY THE ILLINOIS GENERAL ASSEMBLY; AND, IT SHOULD GIVE THE ACCESS COUNSEL THE AUTHORITY TO MAKE OFFICIAL RECOMMENDATIONS BINDING ON ALL PARTIES.**
  
- **IF YOU ARE SKEPTICAL OF THE WISDOM OF DOING THIS, ONE NEED ONLY LOOK AT THE RECENT ROLE PLAYED IN THE IMPEACHMENT PROCESS BY <sup>Auditor</sup>~~INSPECTOR~~ GENERAL BILL HOLLAND TO DISPEL ANY DOUBTS.**
  
- **I SUBMIT THAT IF THE <sup>Auditor</sup>~~INSPECTOR~~ GENERAL DID NOT HAVE THE STATUTORILY BACKED MANDATE IT HAS, OR WAS LEFT TO SWAY WITH THE WHIMS OF POLITICAL CHANGE IN SOME UMBRELLA AGENCY, AND IF IT WAS NOT ARMED WITH SERIOUS ENFORCEMENT POWERS, IT WOULD NOT BE NEARLY AS EFFECTIVE EITHER.**

**I WILL BE HAPPY TO ANSWER ANY QUESTIONS.**