

**The Citizen Advocacy Center
Freedom of Information and Open Meetings Midwest Project Summary**

“A popular government without proper information or the means of acquiring it is but a prologue to a farce or a tragedy – or perhaps both. Knowledge will forever govern ignorance; and the people who mean to be their own governors, must arm themselves with the power which knowledge gives.” (*James Madison, Letter to W. T. Barry, 1822*).

Strong open government laws that mandate transparency in conducting the people’s business are essential components of a healthy democracy. The ideals of a government that is of the people, by the people, and for the people require that the public have, to the fullest extent possible, the capacity to access the governmental decision-making process and documents that are created and maintained with public tax dollars. Broad access to government ensures the public’s capacity to play a role in the democratic process and provides a mechanism by which the public can knowledgably discuss issues of public concern, make informed judgments as to the actions of public officials, and monitor government to ensure that it is acting in the public interest.

Both the federal government and all individual states have open government laws. These laws uphold the ideals of transparency in government and mandate liberal access to government documents and government meetings. By providing public access to government meetings and robust access to information regarding government affairs, open government statutes are cornerstone laws that ensure and protect the free flow of information from government to the people. However, state open government laws have statutorily weak features that must be reformed. Moreover, the implementation of state open government laws suffers from inconsistent governmental responses, despite strong public policy statements which are supposed to provide a framework to interpret statutory provisions. While public bodies have the legal burden to ensure compliance with open government laws, more often than not compliance rests on the shoulders of the public.

Our democracy is weakened when government can circumvent transparency based on ineffective oversight mechanisms, a lack of penalties or implementation of penalties, a lack of training that leads to inadvertent violations, excessive fees that make information inaccessible, ineffective policies that fail to address the integration of technology in the businesses of governing, or few resources available to provide assistance to people when government is resistant to permitting proper access or disclosure. These are just a few of the barriers that impede public participation. A healthy democracy requires that open government barriers be identified, dismantled, and replaced with effective statutory language and institutional protocols that ensure citizen participation and government operation in the light of day.

To address systemic barriers that chill public participation and access to government, the Citizen Advocacy Center (Center) conducted a systemic overview of open government laws in the states of Michigan, Ohio, Illinois, Wisconsin, and Minnesota with the goals of evaluating the provisions and implementation of the statutes. In executing this project, the Center reviewed the relevant statutes and more than 1,000 legal cases, attorney general opinions, and professional publications to produce a comprehensive study of each state’s respective strengths and

weaknesses. The study serves as a valuable resource for policy makers, good government organizations, the media, and citizens who regularly use open government laws.

Specifically, the Center analyzed how the public in each state is entitled to participate in the democratic process and to what extent policy goals of mandating transparency and accessibility to government operations are achieved. With regard to the Freedom of Information Act statutes, the Center focused on issues such as: response time to requests; appeal time and procedures; fees and costs associated with requests; fines and penalties for lack of responsiveness by a government body; the frequency with which available fines and penalties have been implemented; the extent of information exempt from public records requests; the presence of government resources to act as an ombudsman; and provisions that mandate access and disclosure of public records created via the Internet. With regard to the Open Meetings Act statutes, the Center reviewed: public notice and agenda requirements; provisions to address the use of the Internet and other forms of electronic communications to conduct meetings; fines and penalties; the frequency with which available fines and penalties are implemented; and the extent to which a public body can close public meetings.

During the course of completing the Midwest Open Government Project, four major themes surfaced. The first is that all of the surveyed Midwestern states suffer from a lack of enforcement implementation. In every state surveyed except Illinois, public information laws have some kind of fine or penalty provision to deter non-compliance. However, a review of case law indicates that penalties are rarely enforced in the states that have penalty provisions. With respect to open government laws, every state statute includes a variety of enforcement and penalty provisions, some of which include criminal charges and removal from office. Despite strong provisions, few states implement their strong statutory provisions to hold public bodies accountable. The lack of implementation of enforcement provisions has a detrimental ripple effect -- public bodies are less likely to be responsive to requests for public information and more likely to inappropriately utilize exemption provisions in addition to being less likely to hold open government meetings.

The second theme is that no state surveyed has a statutorily created entity with enforcement powers dedicated to ensuring open government.¹ It is laudable that every state examined had either state resources or non-profit organizations available to the media, public officials, and the general public to navigate respective open government statutes, provide training, and advocate for more transparency, accountability, and accessibility of state government. However, considering the systemic lack of enforcement among the states for open government laws in general, a statutorily created office with enforcement powers would substantially increase the likelihood that governmental bodies will comply with open government laws.

The third theme is the lack of mandated training for public officials and public employees on appropriate utilization of open government statutes. Ohio was the only state surveyed that requires every elected official, or a designee, to receive three hours of training regarding use of

¹ Illinois: Attorney General's Public Access Counselor; Minnesota: Department of Administration's Information Policy Analysis Division; Ohio: Auditor of State's Open Government Unit; Wisconsin: Department of Justice's State Programs, Administration and Revenue Unit and the non-profit Wisconsin Freedom of Information Council; Michigan: the non-profit Michigan's Freedom of Information Committee.

that state's open records law during every term in office. Mandatory training for those who fall under the purview of open records and open meetings laws is essential to promoting open government. Required training increases the capacity of public officials and employees to comply with the law and offers a degree of accountability.

The fourth theme is that participatory opportunities for the public during public meetings are absent. The preamble of each state's open meetings statute identifies the broad goals as ensuring transparency in the government decision-making process and guaranteeing that the public has access to full and complete information regarding the affairs of government. Beyond having the capacity to access government information and observe how government operates, a healthy democracy requires an engaged public that has the opportunity to publicly comment on issues that public officials intend to take action on. Michigan is the only state surveyed that requires public bodies to provide an opportunity for the public to speak at public meeting, within appropriate restrictions. This is a tremendously important element that is conspicuously absent in other states.

Beyond the major themes identified above, the project brought to light interesting aspects of each state's open government laws. For example, Ohio's Open Meetings Law has outstanding provisions within the statute and remarkable fines and penalties for non-compliance. However, the statute does not apply to home rule units of government per the Ohio Constitution. In Illinois, the notice and minutes provisions of the Open Meetings Act are the most stringent of the five statutes, but the Freedom of Information Act is the only state surveyed that fails to have any kind of penalties or fines for violations. In addition, Illinois's statute has the longest list of exemptions by far, making the statute perplexing. With respect to Michigan, while its Open Meetings Act mandates public comment opportunity at public meetings and its Freedom of Information Act covers private entities that receive more than half of its funding from a government agency, the Governor's office, Lieutenant Governor's office and legislature are exempt from the statute. In addition, Michigan has the most stringent requirements regarding the imposition of fees for searching and compiling public records and the shortest statute of limitations under the Open Meetings Act when issues of expenditures are at stake. Wisconsin, while considered to have fairly strong open government laws, is devoid of an administrative appeals process for when requests are denied and lacks a firm statutory deadline by which public bodies must respond to requests for records. The lack of a firm deadline results in unjustified delays in accessing government information. Finally, Minnesota places a high priority on protecting the privacy of a requestor of public records, as well as an individual who may be the subject of a request. However, this leads to tremendously complex and confusing open records laws. The multi-tiered system of laws and regulations regarding the production of government documents renders the statutes virtually unusable to general public. Moreover, public bodies in Minnesota are not required by law to provide public notice of meetings, agendas detailing what action public bodies will take at such meetings, or that any minutes beyond the recording of votes be taken.

As the Center completed its broad overview of each state's statutory provisions, we completed comparative analyses highlighting positive and negative anomalies that influenced our eventual reform recommendations for each state. In addition to the individual state policy reports that provide an overview of each state's open government laws and the identification of specific

strengths and weaknesses, the Center drafted ten model statutes that are tailored to each state that good government advocates can use to begin the conversation about how to advance specific reforms. Additionally, the Center has produced citizen guides that translate dense legalese into an easily understandable format for the public. The combination of the policy reports, model legislation, and citizen guides results in a comprehensive open government tool box that can be effectively deployed to advance systemic democratic protocols. The Midwest Open Government Project is a substantial endeavor embarked on by the Center that has produced significant results to help strengthen democracy and build the capacity of the public to participate and affect government decision-making.