

**Connaughton and Chieppo: Public records law falls short**

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By Mary Z. Connaughton and Charles Chieppo/Guest Columnists

"Transparency" was the term of choice on Beacon Hill last year. When the dust finally settled on the legislative session there was some progress in a state that has long ranked at or near the bottom in terms of open government, but the change was hardly transformative.

A long-overdue public records reform included important elements like subjecting the MBTA Retirement Board to the public records law, establishing a public records officer at every agency to be responsible for records requests, promoting the use of electronic records in response to requests, stronger penalties for agencies that are delinquent in their response to public records requests and reducing the costs associated with obtaining the records.

But there are many other areas the compromise law didn't address. A process by which requests for public officials' Statements of Financial Interests (SFIs) go through the State Ethics Commission, which provides the public official with the name of the requester, remains in place. The provision obviously discourages public engagement, and SFIs should be treated the same as any other public records.

The problematic exemption under which the state Legislature is not considered a "public body" for purposes of the public records and open meeting laws also remains. Rather than address it, the legislation created a special legislative commission to look into the issue and report back by the end of the year.

Similarly, the reform failed to change the interpretation of a 1997 Supreme Judicial Court ruling that allows the Governor's office to fulfill public records requests "at the office's discretion." The special commission looking into the legislative exemption is also tasked with studying this one.

Another loophole that prohibits citizens from gaining access to any records relating to a policy while it is being developed also remains. Citizens are entitled to know what their elected and appointed officials are thinking as they formulate policy.

A provision in the new law calling for those who request public records to be reimbursed for "reasonable" legal fees is an important step forward. But while it contains a presumption in favor of such awards, the law provides several conditions under which a judge could waive the fees. For those without deep pockets, a subjective determination of whether a public entity should be relieved of the responsibility to pay fees is a disincentive to request public records.

For years the Legislature has hired its own firm to perform a partial review of its books and records that gives the public a very limited view of legislative operations. A better approach would be to allow the state auditor to audit the Legislature and make the results public.

Accountability provides a powerful incentive to improve and is one reason why the MBTA has made great progress since its meltdown during the harsh winter of 2015. But problems remain. The T should develop a real-time transparency tool that provides the public with on-time commuter rail performance data by line and for each individual trip.

After years of inaction, there was progress in the drive to make government more open last year. But for a state in which government has long been almost uniquely opaque, there is far more to do.

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