

Sunshine needs changed for digital shade

This has been a tough summer for the Sunshine Law in Missouri, as well as for other open records laws in other states.

In this state, a circuit court judge considering whether the Sunshine Law was violated determined that disappearing text messages sent and received in the cell phone app “Confide” were not “records retained by a public body” even though the phone was undisputably provided to the employee by its governmental body employer. The determination wasn’t based upon who paid for the phone or the subject of the message – but based upon the fact that it’s hard to “retain” something that disappears within seconds.

There has been much discussion since that ruling about the need for Missouri law to amend the definitions of “retained” and “record.” But little can happen when the legislature isn’t even in session. And nobody is counting how many more government phones in the interim have downloaded apps like “Confide” or its siblings.

In Pennsylvania, a law took effect at the end of June that seals records of persons who committed nonviolent crimes more than 10 years ago. The Governor, in signing the law, said, “I am proud to sign this legislation which will make it easier for those whom have interacted with the justice system to reduce the stigma they face when looking for employment and housing.”

A report from The Center for American Progress noted that between 70 million and 100 million Americans have some kind of criminal record. Federal legislation has been introduced which would similarly seal such records. And similar efforts are underway in a number of states, according to a CNN report on the Pennsylvania law.

While arguments continue in Missouri over whether the Clean Missouri amendment opens up legislators’ records to state Sunshine Law requests, the Washington State Supreme Court heard an argument this summer over an identical issue. A lower court decision said that each legislator’s office under that state’s public records law is a “state agency,” and therefore those records are open records. While the litigation was pending, the state legislature rushed through a bill, suspending all normal procedures, to exempt them from the law. The subsequent outpouring of objections from the public and the media led to the ironical result that some of those same legislators asked the Governor to veto the bill, which he did.

Meanwhile, the Washington Supreme Court still ponders this issue.

Also this summer, *USA Today* announced a network of its reporters across the country had gathered discipline and accountability records on more than 85,000 law enforcement officers. The first group of records released included more than 30,000

officers from 44 states who have been decertified.

But obtaining such records continues to be nearly impossible. Internal affairs reports are not readily available to the public and body camera video is often not available except in cases where used to show attacks on law enforcement officers. While there is no doubt that “good” cops far out number “bad” cops, that doesn’t mean the public’s right to monitor law enforcement activities is diminished.

What can we conclude from all this? It is our job to continue to remind the public that transparency in government is mandatory to ensure good government. And that access to various opinions from across the community results in a stronger community for all of us.

My reading for the summer has been “Truth in Our Times,” a book by David E. McCraw. David is the top newsroom lawyer for the *New York Times*. He has my job on steroids. In a year they file thousands of public records lawsuits and receive hundreds of letters making libel demands. (Many from Trump’s organization, it appears.)

But I loved this quote from him, and I leave it for you to ponder.

“The First Amendment is not really dead but it will live long only if the American people fall in love with it again. It is no effortless romance. It requires hard work: to not just embrace the right of everyone to speak, but to care about the truth, to listen and hear, to discern as best we can, and to believe that, for all of its gob smacking craziness in our digital present and future, the marketplace of ideas is still a better idea than anything else anyone else has dreamed up.”

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