

## **North Carolina: a dark cloud over open records laws**

By Bill Arthur

The takeover of North Carolina state government by Republicans that began in 2010 has led to clashes with Democrats over teacher pay, taxes, health care and support for public universities. It has produced “Moral Monday” protest demonstrations at the legislature over the state’s direction. And lately, it has also given rise to complaints from advocates of open government that many North Carolina agencies are violating state law by failing to release key documents to the public in a timely manner.

“This administration, and particularly the agencies that are within the ambit of the governor’s appointive powers, are just performing abysmally when it comes to complying with the public records law,” said Hugh Stevens, lawyer for a group of eight leading media outlets and public interest groups that sued Republican Gov. Pat McCrory and the secretaries of eight Cabinet agencies in July.

They contend the governor and the agencies aren’t following the state’s Public Records law, which states that documents pertaining to the transaction of public business are the “property of the people” and should be turned over “as promptly as possible.”

A request from the *INDY Week* newspaper in November 2013 for McCrory’s travel documents wasn’t fulfilled until March 2015, and came with redactions, the lawsuit says. Although the Southern Environmental Law Center requested documents in Jan. 2014 relating to the creation of special travel lanes on an interstate highway, it didn’t get a response until May 2015, the suit asserts. WRAL-TV in Raleigh requested documents in May 2014 about the transfer of the State Bureau of Investigation from the state Attorney General’s Office to the Department of Public Safety, but got no reply for a year, according to the lawsuit.

“Responses delayed are effectively responses denied,” Stevens said.

McCrory’s office didn’t respond to requests for comment. In July, it said his administration is a “champion of transparency and fair and legitimate news gathering.” But it also said some people are “exploiting the public records law and filing overly-broad and duplicative records requests that gum up the day-to-day operations of state government.” It said that often there isn’t enough money or staff to meet the requests.

These delays are one reason North Carolina got a score of 65, or a D rating, ranking it 18th among 50 in the State Integrity Investigation, a data-driven assessment of state government accountability and transparency by the Center for Public Integrity and Global Integrity. The project examined the period from January 2013 to March 31, 2015. The rank, if not the grade, is slightly better than what North Carolina received in a similar project three years ago. In that study the state received a score of 71, or a C minus, ranking 21st among the states. The scores aren’t directly comparable because of changes in questions and methodology, such as eliminating the category for redistricting, which generally occurs every 10 years.

**A mixed bag**

Ethics and transparency policies in North Carolina aren't all bad. Those who wish to check the campaign spending of a political candidate can get the information in minutes from the Board of Elections website. Citizens can find the asset disclosure statements of public officials simply by clicking on the state Ethics Commission's website, and the reports of the state auditor's investigations also are on line and easily available.

This hard-to-get, easy-to-get dichotomy reflects North Carolina's split political personality. With almost 10 million people, North Carolina is now the ninth largest state, and it's not all red, not all blue.

"North Carolina had a real spurt of sunshine in the mid-'70s through the 1980s, modernized its open meetings law, put in voting machines at the legislature, made sure there was much more accountability," said Ferrel Guillory, director of the program on Public Life at the University of North Carolina at Chapel Hill. "To a large extent the state has been living on the gains of a generation ago, not entirely retrenching, but not entirely expanding either, its commitment to openness."

The state received Cs for accountability in its executive and legislative branches. The state budget process is reasonably transparent, as are procurement and internal auditing. But the state received lower grades for weak ethics enforcement, poor monitoring of lobbyists, low judicial accountability, and weak transparency of state employees' pension plan operations.

While the state is making progress in some areas, advocates for openness say it is backsliding in others. In 2013, for example, the Republican-controlled legislature limited the power of the State Judicial Standards Commission to discipline judges. Last year, lawmakers changed the public records law to exclude information related to the state's efforts to lure industries from outside its borders, typically through tax breaks and other negotiated benefits. In 2013, the legislature changed the law so that the names of those with permits to carry concealed handguns are no longer a matter of public record.

"This current General Assembly seems to be more interested in removing information than in making information available," said Jonathan Jones, director of the North Carolina Open Government Coalition, a nonpartisan, nonprofit group that worked to ensure public access to government activity.

Four of the nine officials within the Department of the Secretary of State who handle filings by lobbyists of their activities and spending have been let go. The result is that it takes about two weeks before the reports are available on the agency's web site.

Likewise, the state Board of Elections is years behind in auditing campaign finance reports. That means it could be months or years before a violation, such as a candidate spending campaign funds for personal use, is discovered.

"It's a major problem, and the Board of Elections has acknowledged it in the past and supported moving to required electronic reporting," said Bob Hall, executive director of Democracy North Carolina, a nonpartisan, nonprofit organization seeking to increase voter participation. But campaign finance reports need not be submitted electronically until 2017.

North Carolina has an Ethics Commission that handles alleged violations and publishes asset disclosure statements of legislators, top executive officials, judges and other state leaders. But the forms don't require disclosure of the net worth of an individual, and mutual funds and pension plans may be omitted. Officials must include family members in their listings, which helps in checking whether person has a conflict of interest.

But the state wrestled uneasily with evidence that two lobbyists had intimate relationships with top aides to then House Speaker Thom Tillis, according to the *Raleigh News & Observer's* account. While not directly describing any specific case, the commission ruled in February that consensual sex between a lobbyist and a state official didn't constitute a gift required to be reported, because no money was exchanged. "I think I understand why the ethics commission made the decision they did, but it's very troubling," said Jane Pinsky, director of the NC Coalition for Lobbying and Government Reform and a lobbyist herself.