

freedom of information

IN THE DIGITAL AGE



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a project of the ASNE Freedom of Information Committee
and the First Amendment Center
April 2001

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Freedom of Information in the Digital Age

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DEDICATED TO *the memory of James Russell Wiggins, whose vision and love of
a free press helped give birth to the Freedom of Information Act.*

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INTRODUCTION

Newspapers must make the case for open records

by Ken Paulson



THIS FIRST AMENDMENT CENTER SURVEY on Americans' attitudes toward access to information sends two clear messages to the newspaper industry:

- Americans are unsettled by emerging technologies and have increasing concerns about their personal privacy.
- They're willing to handcuff the news media if that's the price to be paid for shoring up personal privacy.

In the end, that one-two punch may undermine both access to public information and freedom of the press.

The First Amendment Center entered into this project with the ASNE Freedom of Information Committee because of our belief that, at a time when so many government decisions are driven by data, access to public information by a free press and an interested public is more critical than ever.

The Founding Fathers guaranteed a free press in order to ensure that there would be a check on their new and powerful central government. States also took steps to protect this watchdog role. In 1790, for example, the Pennsylvania Constitution was amended to guarantee "that the printing presses shall be free to every person who undertake to examine the proceedings of the legislature, or any branch of government. And no law shall ever be made to restrain the right thereof."

While today's news media are often criticized for being reckless or sensational, virtually all newspapers in the early years of this country were one-sided and blatantly partisan. Despite this lack of objectivity and fairness, the nation's founders still felt the need to protect the press.

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The great irony is that today's newspapers are arguably more ethical and nonpartisan than ever, but the public has largely lost sight of their role in monitoring the operation of government.

Make no mistake: if Americans see emerging information technologies only as a threat — a perspective driven in part by newspaper and television pieces warning of the “danger” of the Internet — we'll lose this battle. If Americans continue to view FOI laws as a matter of convenience for lawyers and journalists, we'll lose this war.

The challenge for newspapers, then, is to remind Americans that journalism's traditional watchdog function is alive and well. We have to make the case that greater access to government information benefits the public and not just the press.

It's also important that the nation's newspapers remember that the right to a free press came from the original Americans, citizens of a new nation who demanded this freedom so someone could keep an eye on government.

Being a watchdog is not a job; it's an obligation. We owe it to our readers. We owe it to ourselves.

OVERVIEW

Information age requires new FOI strategies

by Anders Gyllenhaal



DEEP IN THE POLL RESULTS at the center of this booklet are a series of exchanges that explain why the concept of freedom of information is at its most fragile juncture in many years.

When you ask people general questions about government openness, they first give the sort of answers that warm a newspaper editor's heart. They say they support laws on access. They want records to be public. They say they believe that governments should operate in the open.

But when you introduce the notions of personal privacy, modern technology and the Internet, the answers change so dramatically it's as if you're talking to somebody else entirely. In a host of different ways, people say they are afraid of what information in the digital era can do to them.

In the four decades since the passage of the federal Freedom of Information Act and its many state counterparts, the push for openness has always been a tug-of-war.

Some years have brought gains and some years losses, usually a little at a time, in a struggle mostly left up to government agencies, on one hand, and newspapers and a handful of other FOI advocates, on the other.

Now, in a perilously short period, that balance is shifting because of technology, the digitization of information, the rise of the privacy movement and public focus on these topics. It is an understatement to say that supporters of freedom of information are up against a set of challenges for which we are not well prepared.

This is the reason that the American Society of Newspaper Editors, working with the First Amendment Center, has launched a two-year project to develop a strategy for confronting the new elements in the age-old FOI struggle.

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In the first year of this project, we've studied these frontiers, conducted a national public opinion poll, surveyed editors across the country and researched the commercialization of public records. The results of much of this research are assembled in this booklet. Here is a summary of the first-year findings.

PUBLIC-OPINION SURVEY

Conducted and analyzed by the First Amendment Center and printed here in full, the public-opinion survey is an effort to learn more about people's views on access, records, privacy and technology.

What exactly are people most concerned about? What rights to know would they forsake for personal privacy? What elements of freedom of information do they support?

A number of earlier surveys documented the public's hardening views on privacy. We wanted to dissect those views in more detail than ever before. What exactly are people most concerned about? What rights to know would they forsake for personal privacy? What elements of freedom of information do they support? Above all, how can we take these results and strengthen the argument for the principles of openness?

The poll gives us a lot to work with.

The results show that 9 in 10 people support open records and that 6 in 10 see public access as "crucial" to good government. Support is solid for open meetings, court access and other basics of open government.

But those stances don't hold up well when modern technology is added to the mix. Support is weak (22%) for making records available on the Internet; people mistrust both the government and private industry to use personal records appropriately; and a majority (56%) say they would support tighter privacy laws even if such laws would hinder journalists from playing their watchdog role.

Some of the most telling results deal with the intricacies of how people view the use of information. For instance:

- People favor access to information on government and their communities in general, but they oppose making more personal information public, even though much of it already is. They say, for instance, that they want access to criminal convictions, police logs, public officials' salaries and real-estate records. But they don't believe that more personal records — such as divorce records, driver's licenses and voter registrations — should be public.
- They recognize the increasing role that governments and private enterprise play in the information business, but they have deep concerns about where this is going. They do not trust government and industry to use the information as promised, although they trust government a little more than they do private companies. By an overwhelming margin (86%), they oppose the spreading trend among government agencies of selling information to private companies as a way to make money.
- The poll confirmed the same public concerns about privacy that other surveys have found, but it also uncovered an intriguing fact: Few people draw their conclusions from personal experiences. A solid majority (89%) said they were concerned or very concerned about privacy issues. Yet only 1 in 5 has experienced a violation of privacy or has ever requested access to a public record.
- Finally, the poll found low awareness of freedom-of-information laws. Many people view access as a tool primarily for lawyers and journalists and, as such, not an issue that affects them personally.

Although the poll suggests supporters of freedom of information have their work cut out for them, the findings also show some promising avenues.

Most of these privacy concerns seem to be shaped by impressions, rather than personal experience. People do not seem to make distinctions among the expanding number of department stores, insurance companies, database firms, government agencies and newspapers that make use of personal information. There's no evidence people have much appreciation for the public-service role that newspapers play.

And it is abundantly clear that advocates of freedom of information need to come up with a clear-headed and comprehensive statement about where we stand on privacy: which elements of the privacy movement are reasonable responses to legitimate concerns, and which are overreactions to new technology, exaggerated concerns or issues already covered under existing laws.

SURVEY OF EDITORS

Right after the public survey was completed, ASNE conducted a survey of editors across the country. This study had two aims: to learn more about how individual newspapers are approaching these challenges and to compare editors' views with those of the public.

The editors, of course, hold strong opinions. A vast majority (96%) say the government conducts too much business in secret. Only a slightly smaller percentage (82%) says public-access laws need to be strengthened.

From there, though, the consensus diminishes. Editors are divided, for instance, over the current debate about making driver's license information public. They are split over how well current law protects privacy. They also report widely varying experiences with local and state access rules.

Although some newspapers make only limited use of technology in their own public-records efforts, others are well into this. Many routinely make public-records databases available to readers. Almost all are using the Internet to access records for reporting purposes, and many are linking to government databases, both with specific stories and with standing features.

Between this survey and other research, a picture emerges of a profession that considers freedom of information a vital principle but does not agree on what that means or how to put it into practice.

Emphasis on access varies among papers. Use of federal and state access laws does as well. Although 49% of the editors characterized their paper's involvement in FOI issues as "very active," a majority said they were either "not very" or only "somewhat" involved on FOI issues.

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This is not surprising; the FOI struggle has always been waged by a smaller core of advocates.

But one of the messages of this project is that this topic will require a higher priority among all newspapers if the argument for the public-service role of information is to be heard above the clamor of celebrities, politicians and other people worried about the hazards of openness.

COMMERCIALIZATION OF RECORDS

We've included a section in this booklet on the commercialization of records, because this is turning out to be as important as any force in shaping both public opinion and future legislation on access.

The trend toward commercialization is at work on many fronts. A multibillion-dollar-a-year industry has sprung up, using digital information and new technologies to sell products, track consumers, raise money and follow market trends. Government agencies are rushing into the field, sometimes as peddlers of raw information, sometimes as purveyors of digital records, sometimes as partners with private firms.

We should see some of this as positive. Almost anything the government does to make more information available for free is a good thing. But so many other questions arise from all of this that private information companies have formed their own consortium to promote their views.

We who work in the newspaper industry — the industry that has pushed for the access that makes this all possible — must determine where we stand on these complex questions and work harder than ever to get our views across.

To list just some of the questions we must address: Should we be working with the commercialized-information industry, or are such businesses our competitors? What roles do we think governments should play in providing electronic records, and what guidelines should they follow? Should newspapers accept exemptions to get freer access than private companies or the public?

LOOKING AHEAD

The first year of this project has been devoted to asking questions and exploring problems. The coming year will be about finding answers and developing strategies.

The project will focus on three strategic areas where we want to hammer out crisp and helpful guidelines that will be useful to editors and represent the needs of newspapers.

Those areas are:

- Recommendations on how government should handle the digital-information challenges, including how to ensure that freedom-of-information guidelines apply all across government's new digital landscape; how to push openness for electronic as well as paper records; how to promote Web access to government agencies; where to stand on the government sale of public records; and how to develop model legislation on these topics.
- Recommendations for newspapers confronting digital FOI issues, including providing examples of best practices among newspapers promoting freedom-of-information initiatives; developing guidelines for newspaper Web sites to provide more access; creating an industry policy statement on privacy; and providing new ideas for FOI advocacy in an electronic world.
- Recommendations on new technologies, including guidelines on the commercialization of information that keep FOI principles foremost; guidelines for journalistic uses of databases that clarify our public-service goals; and development of a model privacy policy for newspaper Web sites.

We want to draw interested editors, publishers and other advocates of freedom of information into the debate at the heart of this project. We hope to expand the discussion with this year's convention program. We'll also host a Freedom of Information Summit Sept. 28-29, 2001, in Washington, D.C., to draw up this proposed strategy. The project will conclude with recommendations for ASNE to consider at its 2002 convention.

Anders Gyllenhaal, executive editor of The News & Observer in Raleigh, N.C., is chair of ASNE's Freedom of Information Committee.

Freedom of Information Survey — General Public

Percentages based on total of 1,005 interviews conducted with national scientific sample of adults 18 years of age or older.

Hello, my name is _____, and I am calling from the University of Connecticut Center for Survey Research and Analysis. We are conducting a national survey of people's attitudes about current issues. May I please speak to the youngest male in this household who is at least 18 years of age or older and home right now? (IF NO YOUNGEST MALE AT HOME: May I speak to the oldest female in this household who is at least 18 years of age or older who is now at home?)

Introduction to Question 1: First, I'd like to ask you about a few issues facing the country today. After I mention each one, please tell me whether you are very concerned, somewhat concerned, not too concerned, or not at all concerned about the issue.

Q1. Crime. Are you ...

65% Very concerned
25% Somewhat concerned
8% Not too concerned
2% Not at all concerned

Q2. Personal privacy. Are you ...

61% Very concerned
28% Somewhat concerned
8% Not too concerned
3% Not at all concerned

Q3. Access to quality health care. Are you ...

63% Very concerned
27% Somewhat concerned
6% Not too concerned
3% Not at all concerned
1% Don't know/No answer

Q4. The future of the social security system. Are you ...

61% Very concerned
26% Somewhat concerned
8% Not too concerned
4% Not at all concerned
1% Don't know/No answer

Q5. Government secrecy. Are you ...

38% Very concerned
34% Somewhat concerned
17% Not too concerned
8% Not at all concerned
4% Don't know/No answer

Q6. Would you say your general attitude toward the news media is ...

7% Very favorable
44% Somewhat favorable
31% Not too favorable
16% Not at all favorable
2% Don't know/No answer

Introduction to Question 7: How much, if anything, have you seen or heard in the news lately about each of the following? Would you say you have heard a lot, some, a little, or nothing at all about ...

[RANDOMIZE Q7-Q10.]

Q7. Laws concerning the location of sex offenders in the community, such as Megan's Law. Have you heard ... (READ CHOICES)

28% A lot
31% Some
25% A little
16% Nothing at all

Q8. Laws concerning crimes committed out of prejudice or anger toward minority groups, sometimes referred to as hate-crime laws. Have you heard ... **(READ CHOICES)**

- 42% A lot
- 30% Some
- 21% A little
- 7% Nothing at all
- 1% Don't know/No answer

Q9. Laws concerning campaign finance reform, such as the McCain-Feingold bill? Have you heard ... **(READ CHOICES)**

- 27% A lot
- 25% Some
- 24% A little
- 23% Nothing at all
- 1% Don't know/No answer

Q10. Laws concerning public access to government records or meetings, sometimes referred to as "freedom of information" or "sunshine" laws. Have you heard ... **(READ CHOICES)**

- 9% A lot
- 24% Some
- 33% A little
- 34% Nothing at all

Q11. I am going to read you two statements. Please tell me which one better reflects your own opinion. Is it ... **(READ CHOICES 1 AND 2)**

- 30% Laws guaranteeing public access to government records should be strengthened even if it means Americans may lose some privacy in the process
- 54% Laws guaranteeing personal privacy should be strengthened even if it means Americans may lose public access to some records held by government
- 9% Neither (volunteered)
- 3% Both (volunteered)
- 4% Don't know/No answer

Question 11 Probe: Do you feel strongly about this or not?

- 61% Strongly
- 38% Not strongly
- 2% Don't know/No answer

Introduction to Question 12: Overall, do you think Americans have too much, too little or just about the right amount of ...?

[RANDOMIZE Q12-Q14.]

Q12. Access to government records. **(PROBE: Do Americans have too much, too little, or just about the right amount?)**

- 7% Too much
- 48% Too little
- 30% Just about the right amount
- 15% Don't know/No answer

Q13. Access to government meetings and hearings. **(PROBE: Do Americans have too much, too little, or just about the right amount?)**

- 5% Too much
- 45% Too little
- 38% Just about the right amount
- 12% Don't know/No answer

Q14. Access to court records. **(PROBE: Do Americans have too much, too little, or just about the right amount?)**

- 7% Too much
- 32% Too little
- 45% Just about the right amount
- 16% Don't know/No answer

Q15. In general, do you believe that public access to government records is crucial to the functioning of good government, or do you believe that it plays only a minor role?

- 60% Crucial
- 35% Minor role
- 6% Don't know/No answer

Introduction to Question 16: I'm going to read you a list of different types of information held by the government. For each one, please tell me whether or not you think it should be made available to the public. First ...

Q16. Driver's license information **(PROBE: Is that definitely or probably, should or should not?)**

- 26% Definitely should be made available
- 18% Probably should be made available
- 20% Probably should NOT be made available
- 34% Definitely should NOT be made available
- 2% Don't know/No Answer

Q17. Records of criminal convictions **(PROBE: Is that definitely or probably, should or should not?)**

- 67% Definitely should be made available
- 18% Probably should be made available
- 7% Probably should not be made available

5% Definitely should not be made available
3% Don't know/No answer

Q18. Salaries of public officials (PROBE: Is that definitely or probably, should or should not?)

66% Definitely should be made available
14% Probably should be made available
7% Probably should NOT be made available
9% Definitely should NOT be made available
3% Don't know/No answer

Q19. Police logs (PROBE: Is that definitely or probably, should or should not?)

52% Definitely should be made available
25% Probably should be made available
10% Probably should NOT be made available
9% Definitely should NOT be made available
3% Don't know/No answer

Q20. Real estate records (PROBE: Is that definitely or probably, should or should not?)

39% Definitely should be made available
26% Probably should be made available
17% Probably should NOT be made available
15% Definitely should NOT be made available
3% Don't know/No answer

Q21. Divorce records (PROBE: Is that definitely or probably, should or should not?)

18% Definitely should be made available
20% Probably should be made available
26% Probably should not be made available
33% Definitely should not be made available
4% Don't know/No answer

Q22. Voter registration information (PROBE: Is that definitely or probably, should or should not?)

30% Definitely should be made available
17% Probably should be made available
20% Probably should NOT be made available
30% Definitely should NOT be made available
4% Don't know/No answer

Q23. Have you ever requested any records, such as the ones I just mentioned, from a government agency?

20% Yes
80% No (Skip to Q25.)
1% Don't know/No answer (Skip to Q25.)

Q24. Was that from the local, state, or federal government? (ACCEPT UP TO 3 RESPONSES)*

73% Local
37% State
16% Federal
1% Don't know/No answer

*Responses may add to more than 100% due to multiple responses.

Q25. Have you ever accessed any government records via the Internet?

11% Yes
76% No
14% Don't know/No answer

Q26. In general, about what percentage of legitimate requests for public records do you think government agencies typically fulfill? Just your best guess is fine.

26% 0 thru 25%
47% 26 thru 50%
17% 51 thru 75%
11% 76 thru 100%

Q27. Do you think members of the public generally know how to find government information when they need to?

27% Yes
72% No
1% Don't know/No answer

Q28. Which of the following groups do you think make the most requests for information held by government agencies? (READ RESPONSES 1-6; ACCEPT UP TO SIX RESPONSES)*

39% Journalists
21% Researchers
14% Business people
7% Ordinary citizens
51% Lawyers
7% Some other group
3% All of them (volunteered)
3% Don't know/No answer

*Responses may add to more than 100% due to multiple responses.

Introduction to Question 29: Please tell me whether you agree or disagree with each of the following statements ...

[RANDOMIZE Q29-Q33.]

Q29. All government records should be made available over the Internet. Do you ... (READ CHOICES 1-4)

- 11% Strongly agree
- 11% Somewhat agree
- 26% Somewhat disagree
- 50% Strongly disagree
- 3% Don't know/No answer

Q30. Even if I never need to view a public record myself, it is important that I have the right to do so. Do you ...

(READ CHOICES 1-4)

- 68% Strongly agree
- 23% Somewhat agree
- 4% Somewhat disagree
- 3% Strongly disagree
- 2% Don't know/No answer

Q31. The benefits of using the Internet are greater than the privacy problems that go along with using the Internet. Do you ... (READ CHOICES 1-4)

- 30% Strongly agree
- 29% Somewhat agree
- 13% Somewhat disagree
- 16% Strongly disagree
- 12% Don't know/No answer

Q32. Citizens have no control over how personal information about them is used by the government. Do you ...

(READ CHOICES 1-4)

- 49% Strongly agree
- 21% Somewhat agree
- 13% Somewhat disagree
- 13% Strongly disagree
- 4% Don't know/No answer

Q33. Consumers have no control over how personal information about them is used by private companies. Do you ... (READ CHOICES 1-4)

- 49% Strongly agree
- 21% Somewhat agree
- 13% Somewhat disagree
- 15% Strongly disagree
- 3% Don't know/No answer

[RANDOMIZE Q34-Q36.]

Q34. How concerned are you, if at all, that your personal privacy might be violated by a private company? Are you very concerned, somewhat concerned, not too concerned, or not at all concerned?

- 51% Very concerned
- 30% Somewhat concerned
- 13% Not too concerned

- 5% Not at all concerned
- 1% Don't know/No answer

Q35. How concerned are you, if at all, that your personal privacy might be violated by the government? Are you very concerned, somewhat concerned, not too concerned, or not at all concerned?

- 50% Very concerned
- 30% Somewhat concerned
- 14% Not too concerned
- 7% Not at all concerned
- 1% Don't know/No answer

Q36. How concerned are you, if at all, that your personal privacy might be violated by a fellow citizen? Are you very concerned, somewhat concerned, not too concerned, or not at all concerned?

- 48% Very concerned
- 31% Somewhat concerned
- 15% Not too concerned
- 6% Not at all concerned

[RANDOMIZE Q37-Q39.]

Q37. As far as you know, has a private company ever misused personal information about you?

- 19% Yes
- 79% No
- 2% Don't know/No answer

Q38. As far as you know, has the government ever misused personal information about you?

- 7% Yes
- 91% No
- 2% Don't know/No answer

Q39. As far as you know, has a fellow citizen ever misused personal information about you?

- 14% Yes
- 84% No
- 1% Don't know/No answer

Q40. In general, do you feel the news media ...

- 65% Unnecessarily invade people's privacy
- 27% Generally involve themselves when it is in the public interest
- 8% Don't know/No answer

Q41. Do you have access to the Internet at home, work or someplace else?

- 42%** Home
- 10%** Work
- 5%** Someplace else
- 23%** No access (**Skip to Q43.**)
- 20%** All (volunteered)

Q42. Since you've had access to the Internet, would you say you are more concerned about personal privacy, less concerned about personal privacy, or would you say your level of concern regarding personal privacy has remained about the same?

- 38%** More concerned
- 1%** Less concerned
- 50%** Remained about the same
- 11%** Don't know/No answer

[ROTATE Q43 AND Q44.]

Q43. In general, when you provide personal information to the government how much confidence do you have that the government uses that information exactly the way they said they would? Do you have ... (**READ CHOICES 1-4**)

- 13%** A great deal of confidence
- 44%** Some confidence
- 25%** Very little confidence
- 15%** No confidence at all
- 3%** Don't know/No answer

Q44. In general, when you provide personal information to companies, how much confidence do you have that companies use that information exactly the way they said they would? Do you have ... (**READ CHOICES 1-4**)

- 7%** A great deal of confidence
- 39%** Some confidence
- 33%** Very little confidence
- 19%** No confidence at all
- 2%** Don't know/No answer

[ROTATE Q45 AND Q46.]

Q45. As you may know, private companies sometimes sell personal information they collect about consumers to other companies. How concerned are you about this, if at all, are you ... (**READ CHOICES 1-4**)

- 58%** Very concerned
- 28%** Somewhat concerned
- 7%** Not too concerned
- 7%** Not at all concerned
- 1%** Don't know/No answer

Q46. As you may know, the government sometimes sells personal information they collect about citizens to private companies. How concerned are you about this, if at all, are you ... (**READ CHOICES 1-4**)

- 59%** Very concerned
- 27%** Somewhat concerned
- 9%** Not too concerned
- 5%** Not at all concerned
- 1%** Don't know/No answer

Introduction to Question 47: Which of the following, if any, have you ever done?

[RANDOMIZE Q47-Q50.]

Q47. Have you ever refused to give information to a company because you thought it was too personal?

- 70%** Yes
- 29%** No
- 1%** Don't know/No answer

Q48. Have you ever asked a company to remove your name and address from any lists they use to market their products or services?

- 62%** Yes
- 38%** No

Q49. Have you ever avoided using grocery-store frequent-shopper cards?

- 23%** Yes
- 74%** No
- 3%** Don't know/No answer

Q50. Have you ever refused to use your credit card to make a purchase online?

- 50%** Yes
- 45%** No
- 5%** Don't know/No answer

Q51. As you may know, some states sell driver's-license and car-registration information to businesses as a way to raise additional funds for government programs. Do you think that selling driver's-license and car-registration information to businesses is a legitimate way for states to raise additional funds for government programs, or do you think it is not a legitimate way for states to raise additional funds for government programs?

- 7%** Legitimate
- 90%** Not legitimate
- 4%** Don't know/No answer

Q52. Recently, Congress passed the Driver's Privacy Protection Act, which says that information given by a citizen to obtain a drivers license cannot be given out to other people or businesses unless the citizen agrees that it can be released. How much, if anything, have you heard about this? Have you heard ... **(READ CHOICES 1-4)**

- 5% A lot
- 8% Some
- 15% A little
- 72% Nothing at all

Q53. In general, would you say you approve or disapprove of this law: The Driver's Privacy Protection Act? **(PROBE: Is that strongly/somewhat approve/disapprove?)**

- 60% Strongly Approve
- 16% Somewhat Approve
- 6% Somewhat Disapprove
- 12% Strongly Disapprove
- 6% Don't know/No answer

Introduction to Question 54: I'm going to read you a list of things that some people think are likely to occur as a result of new personal privacy laws. For each one, please tell me whether you are willing to accept these things happening or if it is unacceptable if these things happen.

[RANDOMIZE Q54-Q57.]

Q54. It could be more difficult for the news media to conduct investigations of alleged wrongdoing. **(PROBE: Do you think it is completely/somewhat acceptable/ unacceptable?)**

- 22% Completely acceptable
- 34% Somewhat acceptable
- 23% Somewhat unacceptable
- 16% Completely unacceptable
- 5% Don't know/No answer

Q55. It could be more difficult for homebuyers to find information about real estate values.

(PROBE: Do you think it is completely/somewhat acceptable/unacceptable?)

- 11% Completely acceptable
- 25% Somewhat acceptable
- 27% Somewhat unacceptable
- 32% Completely unacceptable
- 6% Don't know/No answer

Q56. It could be more difficult for the public to be able to examine licenses and other qualifications of professionals such as doctors or lawyers.

(PROBE: Do you think it is completely/somewhat acceptable/unacceptable?)

- 15% Completely acceptable
- 25% Somewhat acceptable
- 24% Somewhat unacceptable
- 32% Completely unacceptable
- 4% Don't know/No answer

Q57. It could be more difficult for marketers to reach potential customers. **(PROBE: Do you think it is completely/ somewhat acceptable/unacceptable?)**

- 43% Completely acceptable
- 28% Somewhat acceptable
- 15% Somewhat unacceptable
- 9% Completely unacceptable
- 7% Don't know/No answer

Q58. Now that we have discussed a number of issues, I am going to read you two statements. Please tell me which one better reflects your own opinion.

- 27% Laws guaranteeing public access to government records should be strengthened, even if it means Americans may lose some privacy in the process.
- 60% Laws guaranteeing personal privacy should be strengthened, even if it means Americans may lose public access to some records held by government.
- 5% Neither (volunteered)
- 3% Both (volunteered)
- 5% Don't know/No answer

Question 58 Probe: Do you feel strongly about this or not?

- 64% Strongly
- 34% Not strongly
- 2% Don't know/No answer

Introduction to Demographics Question 1: Now I just have a few background questions, for classification purposes only.

D1. In politics today, are you a Democrat, a Republican, and Independent, or what?

- 36% Democrat
- 26% Republican
- 23% Independent
- 8% Other
- 6% Don't know/No answer

D2. In general, do you consider yourself to be a liberal, moderate or conservative?

- 25% Liberal
- 37% Moderate
- 31% Conservative
- 7% Don't know/No answer

D3. What was the last grade of school you completed?
(**READ CHOICES**)

2% Grade school or less
8% Some high school
46% High school grad
25% Some college
12% College graduate
6% Post-graduate
1% Don't know/No answer

D4. Are you White, Black, Hispanic, Asian, or some other race?

77% White
10% Black
5% Hispanic
2% Asian
1% Bi-racial (volunteered)
2% Other
3% Don't know/No answer

D5. Which of the following best describes your employment status?

54% Full-time
10% Part-time
21% Retired
6% Student
5% Homemaker (volunteered)
1% Temporarily unemployed (volunteered)
2% Disabled (volunteered)
1% Other
1% Don't know/No answer

D6. For classification purposes only, is the total yearly income of all members of your family now living at home \$40,000 or more, or would it be less than \$40,000?

45% More (**Skip to D8.**)
41% Less
14% Don't know/No answer (**Skip to D9.**)

D7. And is that ...

24% Under \$10,000
34% \$20,000 to less than \$30,000
34% \$30,000 to less than \$40,000
8% Don't know/No answer

D8. And is that ...

24% \$40,000 to less than \$50,000
37% \$50,000 to less than \$75,000
17% \$75,000 to less than \$100,000
14% \$100,000 or more
8% Don't know/No answer

D9. In what year were you born? (**RE-CODED INTO AGE**)

21% Ages 18 to 29
33% Ages 30 to 44
24% Ages 45 to 59
22% Ages 60 and over

Record Gender. (DO NOT ASK)

45% Male
55% Female

METHODOLOGY

The general public survey on freedom-of-information issues was conducted for the First Amendment Center by the Center for Survey Research and Analysis at the University of Connecticut. Anders Gyllenhaal, chair of the Freedom of Information Committee of the American Society of Newspaper Editors (ASNE), and Ken Paulson, executive director of the First Amendment Center, provided overall direction for the project. At the University of Connecticut, Chris Barnes, Erin St. Onge, Jennifer Dineen and Professor David Yalof directed the project.

Dr. Lawrence T. McGill and Diana Pollich of the First Amendment Center supervised the development of the questionnaire, aided by input from Paul K. McMasters, First Amendment ombudsman for The Freedom Forum, and the following members of the ASNE Freedom of Information Committee: Forrest Landon, John Bussian, Terry Maguire, Cindy Stiff and Douglas Clifton. Teri Saylor, executive director of the North Carolina Press Association, also contributed to the development of the questionnaire.

Telephone questionnaires were pre-tested with 30 respondents. The pre-test was used to ensure that questions were understood by respondents and response categories were appropriate.

SAMPLE DESIGN. The University of Connecticut follows procedures in sampling and data processing that are designed to minimize error in the results. For the sampling procedure, a variation of random-digit dialing was utilized; working residential “blocks” were identified with the aid of published directories. These exchanges were chosen in a modified stratified procedure based on the proportion of the theoretical universe residing in the geographic area covered by each published directory. Thus, in general, if 10% of the universe lives in the area covered by a directory, 10% of the exchanges will be chosen from that area.

The universe for the Free Access to Information project was the adult non-institutionalized population of the contiguous 48 states who were 18 years of age and older. The geographic distribution in sampling was based on estimates of the distribution derived from the census figures for towns.

Once working blocks were identified, one telephone number was generated at random for each block. A household was given five distinct opportunities to be contacted before a substitution was made for it. Once it had been determined that the household did, in fact, contain an eligible respondent, a randomly selected resident—unbiased on age and on sex among the eligible respondents—was chosen. If that person was not the one who answered the telephone, the selected individual was called to the phone. “Household” was defined as a dwelling where at least one adult 18 years of age or older resided. Institutions such as college dormitories, prisons and the like were omitted.

FIELDWORK. All interviewing for this project was conducted at the University of Connecticut’s telephone center. Interviews were conducted by telephone from November 9 - 19, 2000, using a Computer Assisted Telephone Interviewing (CATI) system. With the CATI system, survey responses are entered directed into the

computer, reducing the amount of human error in the survey process.

The telephone interviews took place on weekday evenings, Saturday mornings and afternoons and Sunday afternoons and evenings. This schedule avoided the potential for bias caused by selecting people who were at home only at certain times. If a given telephone number did not result in an interview, for whatever reason, a substitution was made for it from within the same working block. This meant that one person not being at home, for example, did not keep his or her cluster from coming into the survey.

SAMPLING ERROR. A total of 1,005 interviews were conducted with a national scientific sample of adults 18 years of age or older. Sampling error for a sample of this size is plus or minus 3 percentage points at the 95% level of confidence. Sampling error for subgroups (e.g. men, women, etc.) is larger.

The size of sampling error depends largely on the number of interviews—the more interviews, the smaller the sampling error. But it also varies in relation to the results obtained on each question asked. In other words, the error for survey results that are closer to 50% is slightly larger than the sampling error for survey results closer to 0% or 100%.

The following table may be used in estimating the sampling error of any percentage in the report. The computed allowances have taken into account the effect of the sample design upon sampling error. They may be interpreted as indicating the range (plus or minus the figure shown) within which the results of repeated sampling in the same time period could be expected to vary 95% of the time, assuming the same sampling procedure, the same interviewers and the same questionnaire were used.

The table is used in the following manner: If a reported percentage is 33% for a group that included 1000 respondents, go first to the row headed “percentages near thirty” and go across to the column headed “1000”. The number at this point is 4. This means that the 33 percent figure obtained for a particular question is subject to a sampling error of plus or minus four points. Another way of saying it is that, very likely (95 times out of 100) the average result of repeated sampling would be somewhere between 29% and 37%, with the most likely figure being 33%.

		Sample Size					
		1000	750	600	400	200	100
Percentages Near	10	2	3	3	4	5	7
	20	3	4	4	5	7	9
	30	4	4	4	6	8	10
	40	4	4	5	6	8	11
	50	4	4	5	6	8	11
	60	4	4	5	6	8	11
	70	4	4	4	6	8	10
	80	3	4	4	5	7	9
	90	2	3	3	4	5	7

Freedom of Information Survey — Editors

Percentages based on total of 247 self-administered surveys (17%) returned from survey questionnaires mailed to top editor at each of 1,448 daily U.S. newspapers.

Dear Editor:

The American Society of Newspaper Editors and the First Amendment Center are in the midst of a two-year study of freedom of information in the digital age. The questions below include many we've asked the public as well as others meant to assess where our industry is on FOI issues. A single questionnaire has been sent to each newspaper in the United States. If you, or an appropriate person you designate, would take a few minutes to fill this out and mail it back to ASNE in the postage-paid envelope provided, it will help us enormously. A report on the results will be made at the ASNE convention in April and printed for wider distribution. All responses will be held completely confidential.

- 1.** Which of the following statements best describes your newspaper with respect to its level of activity and involvement in freedom of information (FOI) issues in recent years, including FOIA requests, open meetings and access issues, and the like?
(Please check one.)

- 49%** In recent years, my newspaper has been very active and involved in FOI issues.
- 34%** In recent years, my newspaper has been somewhat active and involved in FOI issues.
- 17%** In recent years, my newspaper has not been very active and involved in FOI issues.

- 2.** In your career as a journalist, about how many FOI requests have you personally made or overseen?

- 10%** None
- 13%** 1 to 5
- 26%** 6 to 20
- 17%** 21 to 50
- 25%** More than 50
- 10%** Don't know/No answer

[Note: For purposes of this study, an FOI request is defined as a request for government information available under open access laws, such as the federal Freedom of Information Act (FOIA) or other local or state sunshine laws.]

- 3.** In the past 12 months, about how many FOI requests has your newspaper made (including those not yet fulfilled)?

- 13%** None
- 31%** 1 to 5
- 32%** 6 to 20
- 15%** 21 to 50
- 4%** More than 50
- 5%** Don't know/No answer

- 4.** About how many of the FOI requests made by your newspaper in the past 12 months have been fulfilled? [Base = 234 respondents who answered Q3]

- 3%** 0 to 25%
- 11%** 26 to 50%
- 16%** 51 to 75%
- 55%** 76 to 100%
- 15%** Don't know/No answer

5. About how many of the FOI requests made by your newspaper in the past 12 months were fulfilled in a reasonable amount of time?

[Base = 234 respondents who answered Q3]

- 7% None
- 6% 1 to 25%
- 13% 26 to 50%
- 19% 51 to 75%
- 38% 76 to 100%
- 17% Don't know/No answer

6. In about how many of the fulfilled FOI requests did the government provide the information in a form usable by journalists? [Base = 234 respondents who answered Q3]

- 2% 0 to 25%
- 6% 26 to 50%
- 4% 51 to 75%
- 69% 76 to 100%
- 19% Don't know/No answer

For questions 7 – 11, please indicate whether you agree or disagree with each statement by circling the appropriate answer category.

7. All public records should be made available over the Internet.

- 56% Strongly agree
- 36% Mildly agree
- 5% Mildly disagree
- 3% Strongly disagree
- 1% Don't know/No answer

8. The government conducts too much of its business in secret.

- 58% Strongly agree
- 38% Mildly agree
- 4% Mildly disagree
- 1% Strongly disagree
- Don't know/No answer

9. Existing laws adequately protect the personal privacy of American citizens.

- 23% Strongly agree
- 42% Mildly agree
- 26% Mildly disagree
- 8% Strongly disagree
- <1% Don't know/No answer

10. Citizens have no control over how personal information about them is used by the government.

- 19% Strongly agree
- 37% Mildly agree
- 35% Mildly disagree
- 9% Strongly disagree
- <1% Don't know/No answer

11. Consumers have no control over how personal information about them is used by private companies.

- 33% Strongly agree
- 36% Mildly agree
- 23% Mildly disagree
- 8% Strongly disagree
- Don't know/No answer

12. Do you think the public generally knows how to find government information when they need to? **(Please check one.)**

- 5% Yes
- 95% No
- <1% Don't know/No answer

13. In general, how supportive do you think the public is of open access (FOI) laws? **(Please circle one.)**

- 5% Very supportive
- 57% Somewhat supportive
- 34% Not too supportive
- 4% Not at all supportive
- Don't know/No answer

14. As you may know, some states sell driver's license and car registration information to businesses as a way to raise additional funds for government programs. Which of the following statements comes closer to your own opinion about this? **(Please check one.)**

- 9% Selling driver's license and car registration information IS a legitimate way to raise funds for government programs.
- 90% Selling driver's license and car registration information IS NOT a legitimate way to raise funds for government programs.
- 1% Don't know/No answer

15. Recently, Congress passed the Driver's Privacy Protection Act, which says that information given by a citizen to obtain a driver's license cannot be given out to other people or businesses unless the citizen agrees that it can

be released. In general, do you approve or disapprove of this law? **(Please circle one.)**

- 33%** Strongly approve
- 26%** Mildly approve
- 17%** Mildly disapprove
- 23%** Strongly disapprove
- 1%** Don't know/No answer

16. Based on what you happen to know about FOI or sunshine laws in other states, how would you rate the FOI laws in your own state? **(Please circle one.)**

- 10%** Excellent
- 40%** Good
- 34%** Fair
- 15%** Poor
- 2%** Don't know/No answer

17. About how often does your newsroom staff access government records via the Internet? **(Please check one.)**

- 26%** Every day
- 36%** Several times a week
- 9%** About once a week
- 15%** Several times a month
- 14%** Once a month or less
- <1%** Don't know/No answer

18. Some newspapers have created databases from government records on topics such as neighborhood crime rates or public schools and made that information available on their web sites. Has your newspaper created any public record databases such as these? **(Please check one.)**

- 8%** Yes, we have done this many times
- 12%** Yes, we have done this several times
- 13%** Yes, we have done this once or twice
- 23%** Not yet, but we plan to do this
- 43%** No
- Don't know/No answer

19. Some newspaper web sites provide links to public record databases available at other web sites. Which of the following statements apply to your newspaper's web site? **(Please check all that apply.)**

[Note: Percentages in Q19 sum to more than 100 due to multiple responses.]

- 33%** When possible, we include links within specific news stories to relevant public record databases at other web sites.

- 21%** Our web site provides one or more permanent links to public record databases at other web sites.
- 51%** Our web site does not currently provide any links to public record databases available at other web sites.
- 4%** Don't know/No answer

20. Please indicate which of the following statements better reflects your own opinion. **(Please check one.)**

- 82%** Laws guaranteeing public access to government records should be strengthened, even if it means that Americans may lose some privacy in the process.
- 13%** Laws guaranteeing personal privacy should be strengthened, even if it means that Americans may lose public access to some records held by government.
- 4%** Don't know/No answer

21. In general, do you feel the news media unnecessarily invade people's privacy or do they generally involve themselves in people's privacy when it is in the public interest? **(Please check one.)**

- 9%** The news media unnecessarily invade people's privacy.
- 90%** The news media generally involve themselves when it is in the public interest.
- 2%** Don't know/No answer

The following questions are for classification purposes only.

22. In what state is your newspaper located?

23. What is the approximate daily circulation of your newspaper? **(Please check one.)**

- 24%** Under 10,000
- 23%** 10,000 to 25,000
- 24%** 25,001 to 50,000
- 13%** 50,001 to 100,000
- 13%** 100,001 to 500,000
- 2%** Over 500,000
- 1%** Don't know/No answer

- 24. How many years have you worked as a journalist?

- 25. How many years have you been editor at this newspaper?

- 26. Please feel free to write any additional comments you might have about FOI issues in the space below.

OPTIONAL: If you would be willing to share any additional observations about your paper's experiences with FOI issues, please provide your name and contact information below.

Name _____

Phone _____

Email _____

Thank you very much for your help.

Please return this survey in the postage-paid envelope provided by February 1 to:

ASNE
11690B Sunrise Valley Drive
Reston, VA 20191

METHODOLOGY

The editors survey on freedom-of-information issues was jointly conducted by the First Amendment Center and the American Society of Newspaper Editors (ASNE). Anders Gyllenhaal, chair of the ASNE Freedom of Information committee, and Ken Paulson, executive director of the First Amendment Center, provided overall direction for the project.

Dr. Lawrence T. McGill and Diana Pollich of the First Amendment Center supervised the development of the questionnaire. Scott Bosley, executive director of ASNE, supervised the printing and distribution of the surveys and tabulation of the results.

The self-administered questionnaire was mailed in mid-January 2001 to the top editor at each of the 1,448 daily newspapers in the United States. Surveys were completed either by the top editor or by someone designated by the editor. Completed surveys were sent to the American Society of Newspaper Editors, where the results were tabulated by Suzanne Jenkins. A total of 247 completed surveys, representing a 17% response rate, were received by February 9, 2001.

Because the survey was self-administered and the response rate was fairly low, the results are not necessarily representative of all editors at U.S. daily newspapers, and it is not possible to calculate a precise margin of sampling error for this study. The results may be interpreted as suggestive, but not definitive.

ANALYSIS

Commercialization of records raises ownership issue

by Sue Hale



WHEN COMPUTER-ASSISTED REPORTING was in its infancy, reporters struggled with clumsy software and hours of keyboarding bits of public records to create revelations that would lead to front-page stories.

The payoffs were impressive, including stories that revealed teachers with felony convictions, major campaign-contribution violations and the purchase of \$1,000 hammers by the military.

Since that time, a brand-new industry has sprung up with the growth of multifunctional cross-matching software and records-scanning devices. The “data warehousing” business is expected to grow from \$10 billion in 1999 to more than \$27 billion in revenue in 2003, using the concepts newspapers pioneered as a way to market products.

Today, the private sector is taking the lead in developing new technologies, and governments at all levels are using such advancements as geographic information systems for municipal mapping and sophisticated computers for docket management at the county court.

The trends raise a list of questions for newspaper editors: How will the commercial power of records affect their availability? What will these new approaches do to the cost of the raw information? How are the rules of what’s public and what isn’t going to change? And who owns the public record anyway?

That last question quickly becomes complicated when one of the private information companies purchases government information, creates new databases and re-sells the information as a commercial venture.

All of that adds to already growing privacy concerns, because this information is now widely accessible and there is a growing number

How are the rules of what’s public and what isn’t going to change? And who owns the public record anyway?

of people willing to pay for it.

Such database services as Lexis-Nexis and Experian, two of the large national companies, have been largely self-regulating.

In general, government agencies argue that by charging for this information, they can keep it out of the hands of those who would misuse it. While the journalism community mostly has been exempt from paying commercial rates for public records, privacy concerns are now causing some legislators to question why journalists, or anyone, should be excluded from paying the market rates.

Critics say journalists' arguments for exemption are weakened by their willingness to pay the fees charged by Lexis-Nexis and other data sellers. In addition, despite the nobility of purpose that comes with protecting the public's right to know, media outlets are businesses too.

Companies that buy information from state governments to sell to retail, medical, insurance and banking sectors see no reason they should pay fees many times higher than newspapers pay. Some of these companies have strong connections with their local legislators and are expected to attempt to change fee structures.

In addition to the cost issues, questions are coming up about whether the integrated public and private records are subject to state and federal public-records laws.

The largest database companies have formed the Individual Reference Service Group to address both ethical and privacy questions. The group has stated that the services its members provide are a benefit to society and pose minimal risk of identity fraud. The group also has vigorously opposed government regulation of members' databases.

A decade ago, government agencies tried to use the argument that public records were being commingled with non-public records to deny access. In most cases, that argument was successfully shot down by lawsuits forcing the records to be separated.

Today, however, the value of a database depends on its ability to draw results from a variety of searches throughout all its resources.

It appears, at this point, that the database companies may turn out to be allies of journalists more than competitors. The marketplace and the economic impact of commercial-information trade

may be strong enough to override privacy concerns. Data-warehouse companies are pushing hard for legislation in Congress and the states that would let customers opt out of information disclosure versus totally removing that information.

What is most important is that legislation that can have far-reaching consequences for journalists' ability to gather information continues to be introduced and passed at both state and federal levels. It is critical that journalists not be lured into passivity because they have the financial resources to purchase extensive database information.

The public doesn't have such resources. And after all, it's the public's right to know that journalists are supposed to protect.

Sue Hale, executive editor of The Daily Oklahoman in Oklahoma City, is a member of ASNE's Freedom of Information Committee and has spent the past year leading research into the commercialization of public records.

THE FIRST AMENDMENT CENTER works to preserve and protect First Amendment freedoms through information and education. The center serves as a forum for the study and exploration of free-expression issues, including freedom of speech, of the press and of religion, the right to assemble and to petition the government.

The First Amendment Center, with offices at Vanderbilt University in Nashville, Tenn., and in New York City and Arlington, Va., is an independent affiliate of The Freedom Forum and the Newseum, the interactive museum of news. The Freedom Forum is a nonpartisan, international foundation dedicated to free press, free speech and free spirit for all people.



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