

Taking the handcuffs off the police public records

By Tom Bennett

As deputy director of the Georgia Bureau of Investigation, Vernon Keenan looks out upon land in DeKalb County that was overrun by the Union Army during the Battle of Atlanta. Yet he keeps on his wall photographs of Abraham Lincoln and William Tecumseh Sherman.

"I get asked about that all the time," Keenan said. "Lincoln is the person I admire most in American history, and I also admire Sherman.

"I tell agents who come in to complain about something that if I am tough enough to have pictures of Lincoln and Sherman hanging on my wall in the middle of the former Confederacy, then I am tough enough to handle any issue they may raise in their complaints."

The veteran lawman is now right in the middle of another hot campaign, and so far just as impervious to the flying bullets in this one.

Keenan says the Georgia Open Records Act is "confusing" to the state's police officers. So in March he formed a committee to do something about it. This group is drafting a guidebook for 18,000 officers, and also writing a training course for 16 police academies.

The other members are Gary Theisen, deputy assistant director and freedom of information expert for GBI; Robert Buffington, director of the Georgia Public Training Center in Forsyth; Chris Brasher, senior assistant attorney general of the state of Georgia; Paul Maharry, training coordinator for the Georgia Association of Chiefs of Police; and Hollie Manheimer, executive director of the Georgia First Amendment Foundation.

If things work out, the book could be a companion to "Georgia's Sunshine Laws," developed by Manheimer and Attorney General Thurbert Baker, and now in a third edition.

Also enlisted to help clear the police guidebook's content are the District Attorneys Association of Georgia; Georgia Press Association; Georgia Sheriff's Association; and Prosecuting Attorney's Council of Georgia.

The goal: Have booklets ready to distribute at the police chiefs' annual conference in late July.

"I believe law enforcement officials want to be in compliance with the law, but the Open Records Act is confusing," Keenan said.

"It's our purpose to prepare a guidebook that simplifies the law so that law enforcement officials can understand it.

"Gary (Theisen) and I just made a presentation at the chiefs' association. We said, 'This is not going to be entertaining. But it is like Castor Oil. When you take it, you know it is good for you.' "

The main headings in a draft of the committee's guidebook are:

Law enforcement records; personnel records; training records; pending investigations; juvenile records; the open records process; and records retention.

And the appendices of the guidebook shown in a draft are:

A sample open records request; sample statement of need; sample responses to open records requests; same response flow chart; sample telephone log sheet; chart of the exemptions (just publishing them alone would make Georgia open government history); and an index.

Cooperation with the Open Records Act by officers to date has been spotty at best.

The most cited Georgia case having to do with law enforcement records is *Houston v. Rutledge*, involving the Columbus jail and decided in 1976. In it the Georgia Supreme Court said that "all documents, papers, and records prepared and maintained in the course of the operation of a public office are public records."

However, the Columbus Ledger-Enquirer reporter who sought records of the jail is still at work at his paper today, 26 years later, and still waiting for them.

"The records are lost," Jim Houston said. "We have a hearing that is basically postponed until the records are found."

Police scored the poorest, along with school superintendents, in the 1999 Georgia open government survey. It was led by the Georgia First Amendment Foundation, Georgia AP and 11 newspapers and/or news groups. Only 62 percent of city police and only 50 percent of county sheriffs permitted inspection of the previous day's incident reports.

Officers seem overwhelmed by the verbose, scattered law. At a Georgia Public Safety Training Center workshop, a young officer approached a journalist and asked, "Do you have a list of the exceptions?"

All the journalist could do was to stammer that they are all over the code, a set of books filling several shelves of libraries. (Officers that understand the Internet can open the code and use a search tool to study aspects of it. However, that isn't an option for some officers with only high school diplomas.)

Georgia's narrow focus upon Title 50, and the prevailing view statewide that it houses all sunshine law, frame an approach to open government that is not holistic.

The GBI achieved its own body of law in 1972 that became Title 35 and created its Georgia Crime Information Center. The Georgia State Patrol has its own massive law, the Motor Vehicle and Traffic law in Title 40, which has 1090 pages.

The 1995 law making open records of in-state felony convictions went into Title 35, not 50.

To know what felonies are designated, consult Titles 15 and 16. To see how juveniles are affected, see Title 15. And to know how the First Offender law shapes disclosure, go to Title 42.

If you wish to confound a citizen, say this: There are four different methods of paying for law enforcement records in Georgia. "Type P" reports of felony convictions with First Offender records excluded cost up to \$20 at GBI. Motor vehicle accident reports at the 48 State Patrol posts cost \$5. Next door at a police station or sheriff's department, public records are up to 25 cents a page. Longer reports may cost an amount not exceeding the salary of the lowest full-time employee.

During the 1999 open government survey, 134 of 316 government agencies surveyed handed over public records for free.

What's Georgia sunshine law's Catch 22? Here it is: A record open at the local level is private when aggregated at GBI. Put another way, all the reports GBI acquires in the hundreds of investigations it enters are secret under a 1972 law in Title 35 signed by Jimmy Carter. The distinguished former president is crusading admirably for third-world nations to be more transparent. Yet as governor he made a Georgia state secret of a massive body of Ga. police records.

Sixteen academies train officers, but the focus is admittedly very narrow.

"There are eighteen thousand officers and each is required to have twenty hours of training annually," said Robert Buffington of the Georgia Public Training Center.

"We start with 50-18-72 (of the Georgia code) telling them what they're not required to disclose," Buffington said.

"But there's also 50-18-70 and 50-18-71 telling you what they DO have to disclose."

SIGNS OF PROGRESS

An overall picture appears bleak, but the Keenan initiative is part of a what is really an upward trend toward modern methods and openness.

A tractor-trailer truck driver sought for questioning was tracked down in Dublin, Ga., using the Global Positioning System in space.

Patrol-car videos from Georgia's dash-mounted cameras, which are public records, turn up on late-night television.

There are 24-hour live cameras inside Georgia prisons.

Large metro Atlanta police departments have in-car computers.

Columbia County Police answered requests for documents by e-mail as early as 1999.

The state's top law enforcement officer, Attorney General Thurbert Baker, has this as the second click on his department's web site: Open government.

Georgia's scattered police open-government laws

Statutes governing public records of law enforcement are all over the books. They're in six titles, or chapters, of the Georgia Code.

Title

- 15 Juveniles;
Designated felonies
- 16 Designated felonies
- 35 Georgia Bureau of Investigation
and its Georgia Crime Information Center;
In-state felonies
- 40 State Patrol accident reports
- 42 First offenders
- 50 Georgia's sunshine laws