

## When it comes to public information, be the Beastmaster By Richard Whiting

Have you watched NBC's "Spartan: Ultimate Team Challenge," "Ultimate Beastmaster" on Netflix or any of those other extreme competition shows that pit men and women against grueling and physically demanding obstacle courses? It occurs to me that all too often there is a parallel between such competitions and what the public must endure in its effort to access information it is due.

South Carolina's Freedom of Information Act was vastly improved last year with revisions that made public information available in a more timely fashion, required a quicker acknowledgement of a FOIA request and addressed the problem of exorbitant fees public bodies would create as obstacles to access. And while these changes are certainly good, welcome and, in truth, long overdue, there is more that needs to be done in the public's interest.

Public bodies and officials can and do still stonewall the public with tactics that might well follow the letter of the law, but hardly follow the intent. And they can and will take advantage of the public's lack of familiarity with the law.

For example, while the time to respond to a Freedom of Information Act request has been shortened from 15 to 10 business days, a public body might simply acknowledge receipt of the request with a promise to review it and get back to the person making the request – that, even though what was requested might well be a simple and readily available document, such as a copy of a county's working budget, which could and should have been attached to the initial reply. Another tactic would be to acknowledge the availability of the public record, but drag out producing the document until the last day allowed by law, which typically would be 30 calendar days.

The law provides that elected and appointed individuals and governmental bodies can levy fees for the "search, retrieval, and redaction of records" and establishes parameters for those fees. In an effort to make access cost-prohibitive, public officials have often concocted outrageous fees based on their attorney's hourly rates. And, by the way, the previous FOIA did not allow people to be charged for an attorney's time to review material requested. It doesn't take long for someone to back down from a request when faced with an estimate of 10 hours of research at more than \$300 an hour. Add insult to injury when there is an add-on fee for copies of documents at some made-up rate of, say, \$1 per page.

Now, the law restricts the fee to not higher than the hourly rate of the lowest paid employee who can handle the task. More often than not, that is a clerk who merely has to pull a file, redact personal information such as a person's social security number and send it on.

There too, the law addresses today's technology. Many public documents are readily available in digital format. The sale of filing cabinets for paper records has been supplanted by the sale of computer servers. This makes access easier, less time-consuming and dispenses with the cost of producing a paper copy.

Still, even with the FOIA revisions that were signed into law nearly a year ago, not all public bodies and public officials are compliant. For example, not all have posted fee schedules on their websites, even though the law states that "the public body shall

develop a fee schedule to be posted online.” The idea, of course, is to keep them honest so they cannot charge different fees for the same information in an effort to control the flow of information.

And so it goes. The laws have been strengthened and improved to better serve the public and make appointed and elected individuals and governmental bodies accountable to the public for which they work, but the public still too often faces an obstacle course in its pursuit of that information. It’s a course designed to tire them out, make them tuck their wallets and checkbooks back in their pockets and resign themselves to defeat, for their only recourse at this time is to spend more time and money entangled in a lawsuit.

This is Sunshine Week, a week set aside by the media to focus on the public’s right to information. Yes, *your* right.

Tell public bodies you expect from them a forecast of only sunshine when they are conducting *your* business.

These are *your* elected boards and councils, *your* taxpayer-paid administrators and employees. They work for *you*, the very people who elect them, the very people who pay their salaries. Their job makes them answerable to *you*. Their job makes them accountable to *you*.

Their job is not to put you through an obstacle course on the off chance you might come out a winner and not land flat on your face or in a pool of water.

*You* are the Beastmaster, not they.

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