

**Megan Rhyne, executive director**  
**Virginia Coalition for Open Government**  
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### **States of Denial: Government transparency spotty in the states, and worsening**

As the director of the Virginia Coalition for Open Government – a 29-year-old nonpartisan, nonprofit devoted to helping the public navigate the ins and outs of access to state and local government records and meetings – I’m often asked which state has the best open records or open meetings law.

It’s a fool’s gambit to give a conclusive answer.

The words on the page of any given state law may look fine. But those words can be stretched to the point of breaking by some local government, school district or state agency. Meanwhile, just one city over, or at another agency even within the same building, those words may be applied within both the letter and the spirit of the law.

State by state. Locality by locality. It’s going to be different.

Nonetheless, regardless of the strengths or weaknesses of each state’s laws, there are a few challenges every state faces.

To start at the very top, the constant drama that characterizes our national political scenes sucks the oxygen out of state transparency efforts. Coalition leaders like me can wave flags, blow whistles, or yell at the top of our lungs, but we are all too often drowned out by the din of partisan rancor at the federal level.

So, there’s an overarching climate state open-government advocates must overcome. But there are specific state-wide threats we are all dealing with right now.

**The cost of obtaining public records** varies by state, with charges for materials like paper and flash drives widely allowed. However, states differ on fees for search, review, or redaction time. No perfect fee statute exists, though, because provisions are often manipulated. The sad reality is that fees are used as a deterrent: If we charge enough, they will go away. This interferes with journalists’ ability to get records they need for reporting, and it means people of limited means are priced out of their ability to hold their government accountable.

High fees are often justified by governmental bodies by what they see as a legion of **“vexatious requesters.”** These are people who bombard public bodies with records requests just to throw sand in the gears of government operations. Some states have already put limits on how many requests someone can file or under what circumstances, and many other states are trying.

Disappointingly, there are bad actors, but what is driving many of these governmental bodies across the country to paint requestors as vexatious is the sheer amount of records that are generated even for a relatively simple request. **We are all drowning in email.** We use email for everything, we attach things, we “CC” everyone or “reply all,” we create long email chains that quote and requote the previous message. Even for a narrow period of time or for a limited number of email inboxes, the number of potentially responsive records that must be combed through is immense.

Two vexatious issues plaguing public meetings in every state are **public comment periods** and **electronic meetings**. Comment periods – with their limited public forum First

Amendment implications – are often not even a part of a state’s open meetings law, but we’ve all seen videos of the vitriol spewed by speakers on the one hand, to citizens being manhandled out of a meeting on the other. State open-government coalitions spend a lot of their time explaining what their law and the constitution say about public comment periods.

During COVID, we all learned that meetings could be rigged up to ensure the public got to observe and participate in virtual meetings. After COVID, it seems that many governmental bodies forgot. While members of councils, commissions and boards fight for their own right to participate remotely, they have balked at suggestions that they give the public that same right to observe and/or participate via Zoom or some alternative platform.

Some of these challenges are intentional obstacles thrown in the way of the media and the public to prevent them from knowing too much. But some are the product of **inadequate training**. Even states with mandated training struggle with scofflaws and high turnover. Training, too often, also comes from sources that encourage a presumed-closed mindset instead of a presumed-open one.

There are plenty of other areas we all struggle with right now: **police accountability, economic development, disappearing messaging apps, lack of enforcement mechanisms, underutilization of technology**, and on and on and on.

If state open-government coalition leaders have one thing to be thankful for it’s that they will always have work to do.

*Megan Rhyne has been the executive director of the [Virginia Coalition for Open Government](#) since 2008 and worked with the organization for 10 years prior to that. She is also the part-time administrator for the [National Freedom of Information Coalition](#). She can be reached at [mrhyne@nfoic.org](mailto:mrhyne@nfoic.org).*