

American Democracy's Founding Principles: Open Government and a Free Press

By David Martens

This is Sunshine Week when American news media are highlighting the vital job journalists do regularly by engaging those government officials reluctant to be open about their work.

Our founding fathers thought it essential that citizens learn to read. They also believed in the importance of free exchange of ideas through an unregulated press. An educated people should vote wisely for public officials to represent them in an American democracy which could then function properly.

Yet in today's interconnected world, misinformation, disinformation, and fake news on internet platforms are difficult issues, tearing at the fabric of our society. The Merriam-Webster dictionary defines these terms as:

- *Misinformation* - Incorrect or misleading information.
- *Disinformation* - False information deliberately and often covertly spread (as by the planting of rumors) in order to influence public opinion or obscure the truth.
- *Fake news* - Not true, real, or genuine.

Clearly these widespread untruths are barriers to good government. Yet the Pew Research Center found in 2016:

"Some Americans say they have contributed directly to the distribution of fake news by sharing it themselves. About a quarter (23%) say they have ever shared such stories, while roughly equal portions say they have shared made-up news knowingly and unknowingly."

Trust in reporting from truthful sources is more crucial than ever as "alternative facts" abound and spread instantly on social media. Your subscription to a reliable news source shields you from these lies, and we work tirelessly to ensure we have the most up-to-date, accurate information possible.

Open government laws are a critical mainstay of democracy. In 1978 the United States Supreme Court said this about the Freedom of Information Act (FOIA): "The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed."

These standards apply here through Pennsylvania's Sunshine Act requiring open meetings and the Right to Know law mandating open records. These laws guarantee the public's right to be informed about government actions and hold public officials accountable.

It is not unusual for our journalists to encounter barriers to access, which interferes with our ability to report accurately. Melissa Bevan Melewsky, media law counsel for the Pennsylvania NewsMedia Association, assists our staff - and journalists throughout the state - striving for responsible reporting on local governments.

"Every year I receive about 600 Sunshine Act calls and approximately 800 Right to Know Law (RTKL) calls from journalists experiencing public access issues," Melewsky wrote recently. "The last two years those numbers increased significantly as citizens also reached out for help understanding what to do when public officials don't comply. That demand has highlighted some of the problems with the law."

The Sunshine Act is very difficult to enforce. There is no statewide agency to oversee compliance, leaving few options other than a lawsuit when a problem arises. Lawsuits are expensive and time consuming, and most people are unable to bear the high burdens associated with litigation. The legislature should make it easier to enforce the law to encourage compliance and increase public participation.

Pennsylvania's law is one of the nation's worst regarding access to investigatory records. Criminal and non-criminal

investigation exemptions have no time limit: they remain unavailable forever, even long after the investigation is closed. This is a significant problem the legislature should address by narrowing the exemptions and providing access to records after the investigation is over.

The Office of Open Records (OOR) is the state agency overseeing RTKL compliance and provides free training and resources on both the Right to Know Law and the Sunshine Act. While these trainings are robust, regular, and free, public officials are not required to take them. They should be. Citizens should also know the importance of accountable government to empower them to push back when public officials fall short on compliance.

I encourage you to take advantage of the resources available from the Office of Open Records (www.openrecords.pa.gov), and if you agree these state laws should be updated to improve public access and accountability, please let us know by writing to communications@panewsmedia.org.

David Martens became publisher of the York Daily Record in 1978, then served as president from 1983-2004. He was named publisher of the York Dispatch in 2004, serving as president since 2014. He is chairman of the Pennsylvania NewsMedia Association Foundation Board of Trustees.