

# States work to ensure right to know doesn't threaten public safety

by Lisa R. Sattler

In the spring of 2000, when a state of Ohio task force initiated a study of potential routes for shipping radioactive waste through the state, members anticipated a certain degree of public interest in the study. It isn't uncommon, after all, for matters involving nuclear waste to attract public attention.

What the task force did not anticipate was that, a year and a half into the study, terrorists would attack New York and Washington, D.C., and, in so doing, usher in a sea change in the way the nation thinks about terrorism and homeland security.

When the routing study was nearing completion in early 2002, the task force faced a dilemma. Under Ohio's public records law, the final report would be available to "any person" that requested it. The study followed federal guidelines for analyzing routes — taking into account factors such as the location of emergency response assets and difficult-to-evacuate populations. The supporting documentation for the study would contain a wealth of information on the critical infrastructure within the state.

Prior to Sept. 11, most of this information had been available to the public from different sources, much of it on agency Web sites. The thought of it being pulled together into one complete volume, however, gave task force officials cause for concern that the study — if placed in the wrong hands — could inadvertently become a "blueprint" for terrorism in Ohio.

This specific circumstance may have been unique to Ohio, but the matter of balancing the people's right to know with the need to protect the public interest is one that all states face.

## Changes since Sept. 11

Long before the events of Sept. 11, state public records laws included numerous exemptions, prohibiting the disclosure of information ranging from trade secrets and individual medical records, to mining and archaeological resources.

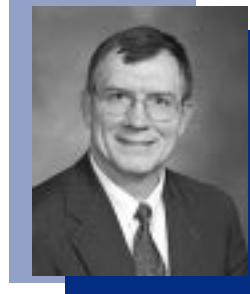
In the aftermath of the terrorist attacks, however, states face an even greater challenge in

ensuring freedom of information while at the same time protecting the safety and security of the public.

In response to this challenge, several states acted in 2002 to further restrict public records laws. The Michigan Legislature amended the state's Freedom of Information Act to exempt "records or information of measures designed to protect the security or safety of persons or property, whether public or private."

The Ohio Legislature acted to prohibit disclosure of "security and infrastructure records." In Kansas, lawmakers passed a bill exempting records that, if disclosed, "would pose a substantial likelihood of revealing security measures" of specific systems, facilities or equipment — such as those related to energy transmission, water treatment or communications services.

The Iowa Legislature took a slightly more broad approach. Rather than focusing explicitly on "security records" or "measures," an amendment to the Iowa public records statute keeps confidential the "records" of certain public entities — such as utilities — for which "disclosure could reasonably be expected to jeopardize the security or the public health and safety of the citizens served by that public entity." The amendment is set to automatically repeal in June 2007.



Rep. Jeff Elgin

Iowa Republican Rep. Jeff Elgin, chair of the Iowa State Government Committee, views last year's temporary change as a

good start.

"If we feel that we went too far or that it isn't working the way we want it to, people have kind of a security blanket with the sunset [provision]," he says.

Noting that the committee is reviewing additional restrictions this year, Elgin says he would like to see public records measures coordinated through one central point in the state — ideally through the office of the homeland security advisor.

"That way," he says, "we'd have a lot more confidence that ... these are the only records we

feel are necessary to be secured." Such coordination, however, "will be worked out slowly."

## Public records laws scrutinized

Other states in the Midwest are considering changes to their public information laws in 2003 to close possible loopholes for would-be terrorists.

In January, the Wisconsin Senate passed a measure that would make it possible to withhold access to records that contain information on "security measures to protect the safety of the plant, equipment, employees, or customers" of public utilities such as electric plants and public water systems. Indiana Senate Bill 557 would exempt records that "have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack."

In Illinois, House Bill 305 would restrict specific information, as well as exempt a broad new category of "information that, if disclosed, may compromise the security of public or private property, personnel or facilities, or emergency or disaster planning, response or recovery."

Broad approaches that leave much to agency discretion are seemingly the preference of agencies doing their best to comply with the law while staying mindful of homeland security needs.

Donald A. Flater, chief of the Bureau of Radiological Health in Iowa, is resigned to the fact that — even with the change in Iowa's law last year — his agency would have to honor a request for information on radioactive sources in the state.

"Here we just don't have a choice on it; we'd have to give it out," Flater says. He adds that the bureau might consult with the homeland security office if a request were to come in from "a questionable source."

Frank Moussa, technological hazards administrator with the Kansas Emergency Management Division, agrees. "In the 1980s, everything was 'right to know,'" observes Moussa. His agency, like many others, reacted by making a vast amount of information available to the public via the Internet.

Shortly after the Sept. 11 terrorist attacks, however, the agency removed from the Web much of what it considered "sensitive" information — such as locations of extremely hazardous substances and risk management plans. The information is still available upon request, but there is a good chance the requester will receive a call from the agency first.

"We've come 180 degrees," says Moussa. "We're saying, 'Yeah, the data may be open to the public by law, but we want to check you out and know what you're going to do with it [before turning the information over].'"



Protecting vital resources, including power plants, is an even greater priority for states since the Sept. 11 terrorist attacks. Finding the appropriate balance between public safety and the public's right to know can be difficult, but several Midwestern state legislatures have tried to address this issue through the introduction and passage of various bills in recent years.