

NFOIC Annual FOI Summit Report

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Shoestring budgets. Lobbying. And, of course, the finer points – and critical importance – of open government. The National Freedom of Information Coalition's annual FOI Summit featured a wide variety of topics, a deep pool of expertise and an expansive spectrum of advice.

"Lobbying is as much education as persuasion," Dan Bevarly tweeted during the opening session of NFOIC's FOI Summit, held last month in New Orleans. The first session included tips on running and maintaining open government organizations on shoestring budgets.

Megan Rhyne, executive director of the [Virginia Coalition for Open Government](#); Hyde Post, president of the [Georgia First Amendment Foundation](#); Anne-Marie Taylor, political and nonprofit fundraiser and co-founder of [Investigate West](#); and David Marcello, adjunct professor of law, Tulane University Law School, and executive director of [The Public Law Center](#) discussed lobbying, digital presence and fundraising.

As many open government organizations are 501(c)(3) organizations, lobbying is typically a taboo word. However, as the panel explained, lobbying provides the opportunity to reach out to people because you are following what happens daily in the legislature – and you are interacting with the stakeholders. It should be viewed and framed a form of educating the legislature rather than coercing legislators.

"Always assume that open government is a bi-partisan issue," Post said. "You're asking for trouble if you align yourself politically."

Post also discussed online content, and he encouraged groups to connect and link to other websites. This will fortify your search engine optimization. Your digital presence will complement all of your organization's efforts, including fundraising.

Taylor suggested that you bring a credit card reader to every event, another key to effective fundraising. "Securing commitments at events can be spontaneous," she said.

The second session was an open roundtable discussion during which participants shared success stories, problems they have encountered and other useful information. Discussions included the diversification of funding, NFOIC's website initiative for state organizations, and legislative sessions that had negative consequences regarding open government. Joey Senat, a representative from Oklahoma, said that state's governor recently "invoked executive, deliberative process and attorney-client privileges" to keep documents related to the creation of a state health insurance exchange from the public. The discussion also revealed strategies for overcoming high fees charged for public records.

The next day began with a discussion of how to avoid the pitfalls of deliberative process. Or, as Linda Lightfoot, retired executive editor of [The \(Baton Rouge, La.\) Advocate](#), called it, "The broad, ill-defined 'kudzu vine' of exemptions."

Michael Reitz, executive vice president, [Mackinac Center for Public Policy](#) and attorney Terry Ryder also participated in the panel discussion. Reitz said that, in addition to "executive privilege," other obstacles remain to the free flow of information. "Whether you like it or not," you need to balance other rights such as privacy and safety with the right to information, Ryder said.

The day continued with *Not a Picayune Problem*, a discussion about how the changing news media is affecting public information.

Peter Scheer, executive director of the [First Amendment Coalition](#) (California), moderated. Panelists included S.L. (Sherry) Alexander, associate professor; College of Social Sciences, [Loyola University New Orleans](#); Steve Beatty, editor, [The Lens](#); Tod Smith, president and general manager, [WWL-TV, Inc.](#); and James O'Byrne, director of state content, [NOLA.com](#)|*The Times-Picayune*.

The panelists generally agreed that even though media outlets, such as The Times-Picayune, have reduced their print versions, the future of news content is still optimistic as alternative and internet-based organizations take up the slack. Smith offered the sobering fact that with *The Times-Picayune* going to three days a week, New Orleans will be the largest U.S. city without a daily print newspaper. He said digital is the future. With new technology, you can still take the paper on the subway with you. According to Smith, the real threat to established journalism is the little guy who does a great job of covering hyper-local issues. But Alexander said that losing a daily paper is a setback for democracy. She said studies show that fewer people vote and run for office in cities without dailies.

Waldo Jaquith delivered the keynote address. Jaquith is an award-winning "open government technologist" who developed the White House's [Ethics.gov](#) tool. The ongoing project intends to put all 50 states' laws, court decisions and legislative tracking information on a user-friendly web platform. In his keynote speech, Jaquith described his "[The State Decoded](#)" projects for Florida, Virginia and Maryland. "State law websites are terrible," Jaquith said. It is not that difficult to make websites more attractive, he said. He suggested letting others suggest improvements to your site – encouraging feedback from someone not familiar with the content will make the site more user-friendly.

Robert Becker, attorney and chair of SPJ's D.C. Pro Chapter First Amendment/FOI and Government Relations Committee; Lori Mince, partner, Litigation Section of [Fishman, Haygood, Phelps, Walmsley, Willis & Swanson](#); and Joey Senat, associate professor, [School of Media & Strategic Communications, Oklahoma State University](#), discussed best practices and best outcomes when issues related to email and digital communications are legislated or litigated in states. Scott Sternberg of [Baldwin Haspel Burke & Mayer, LLC](#) moderated the panel.

Mince discussed how to identify whether email records are public records. The key is to find out how a state defines public records, she said. The most challenging part of email records, from an open government perspective, involves email about public business sent from the private email address of a public official. She advised journalists to ask for documents in their "native electronic formats."

Senat identified some issues regarding public officials' email records. "State public records laws do not necessarily prohibit government officials from using their privately owned electronic communication devices to do their work," Senat said. He said content of emails, not ownership of devices, should determine whether it is a public record. Becker discussed text messages as public records. He said a major problem with the use of text messaging is that ISPs and phone companies have their own retention schedules. Sternberg discussed problems in New Orleans and recommended ways to find out if public officials are discussing public business through emails prior to or during public meetings. He said that there is no effective way of doing that. The best solution: Develop news sources willing to disclose wrongdoings of government officials.

In *Technology and Access: Promise, Possibility and Perils*, moderated by Mark Horvit, executive director, [Investigative Reporters & Editors](#), a panel of experts discussed techniques and strategies for obtaining data and approaches for presenting it in ways that don't risk future access to that data. The session also examined if government policies should take into account what the

public wants to do with data or any other public information. Panelists included: Daniel Lathrop, investigative reporter, [The Dallas Morning News](#); Barbara Petersen, president, [First Amendment Foundation](#) (Florida); Shawn Musgrave, project editor, [MuckRock](#); and Gordon Russell, Managing Editor for Investigations, [The Advocate](#).

Panelists agreed that access to government databases is a challenge, and that public access generally is not considered when databases are designed. Technological advances greatly expand capacity for access and citizen engagement, but also arouse concerns about infringements of privacy rights. However, arguments that any public data can be misused should not restrict availability or be used to deny access.

“It’s a scary environment these days for advocates of open government,” Russell said. Some agencies understand that “public” now means online and are sharing their data with the public. However, in the case of the gun database published by the *Journal-News* of Westchester, N.Y., or the controversial use of mug shots gathered by law enforcement, publishing without careful consideration and public communication can damage the cause of freedom and create unwanted new restrictions.