



IOWA FREEDOM OF INFORMATION COUNCIL

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September 2018

ANNUAL MEETING COMING UP: The annual meeting of the Iowa FOI Council will be held on Thursday, Sept. 27, at the Des Moines Register community room, located on the ground floor of Capital Square, 400 Locust St., in downtown Des Moines.

The meeting will begin at 2:30 p.m. All Iowa FOI Council members and other interested people are invited to attend. (You can't be an organization with "freedom of information" in your name and then try to make your meetings secret.) We plan to wrap up by 5:00 p.m. because many of you will want to attend the annual Iowa Watch dinner that evening at the Downtown Marriott Hotel, three blocks west of Capital Square.

We hope you can sneak away from your office or other obligations and attend our annual meeting. We are eager to hear your comments and suggestions about the work we do. We will update you on some of the issues we are pursuing --- in court and in the Legislature. We will update everyone on our finances, too, and set the council's goals for 2019.

PLAN TO ATTEND: The sixth annual "Celebrating a Free Press and Open Government" awards dinner will be on Thursday, Sept. 27, at the Downtown Marriott Hotel in Des Moines. The evening begins with a reception at 5:30 p.m. Dinner will follow at 6:30 p.m.

Tickets are \$55 each and must be purchased no later than Sept. 20. Tickets and more information can be found at: <https://tinyurl.com/y7kz9jzg>

The event honors Iowans for their support of the First Amendment. Proceeds from the event support the work of the Iowa Center for Public Affairs Journalism, which is better known as Iowa Watch. The nonprofit organization works in collaboration with Iowa media on investigative and explanatory reporting projects by college journalists.

Among the awards being presented are the Iowa FOI Council's Harrison "Skip" Weber Friend of the First Amendment award, which is named for the longtime Iowa Statehouse reporter for the Iowa Daily Press Association. Iowa Watch will present its Steve Berry and Randy Brubaker Free Press Champion awards, which are named for Berry, the co-founder of Iowa Watch, and for Brubaker, a former managing editor of The Des Moines Register.

Berry will be the keynote speaker at the banquet. He retired in 2015 after teaching for a dozen years at the University of Iowa School of Journalism. He moved into academia after working for 33 years as a newspaper reporter, much of that time for the Orlando Sentinel and Los Angeles Times.

Berry and a colleague won the 1993 Pulitzer Prize for investigative journalism for a series of articles in the Sentinel that exposed the unjust seizure of millions of dollars from motorists in Florida, mostly minorities, by sheriff's deputies.

Since he retired, Berry has written about the importance of journalists going back to the basics of facts and clear sourcing to counteract the "fake news" mantra of some critics.

DRUM ROLL, PLEASE: Each year since 2001, the Iowa FOI Council has recognized one or more outstanding advocates for the First Amendment. Our Friend of the First Amendment award now bears the name of a legendary Statehouse reporter, Harrison "Skip" Weber, who worked for the Iowa Daily Press Association and later for the Iowa Newspaper Association.

I encourage you to attend the Sept. 27 Iowa Watch dinner so you can join in honoring this year's Friend of the First Amendment recipients. It's a stellar group.

o **Dave Busiek** has served as the Iowa FOI Council's president, has been on our board of trustees for many years, and has been the national chair of the Radio and Television News Directors Association. Dave played an instrumental role in working with the Iowa Supreme Court and others from the Iowa FOI Council on revisions to the court rules that govern journalists' use of electronics in courtrooms. He also later was a key advocate in persuading the court to allow journalists to have 24/7 access to public court records in all 99 counties. Dave is retiring at year's end after 39 years with KCCI-TV, including an amazing 29-year tenure as its news director.

o **Rita Bettis Austen** is the legal director for the American Civil Liberties Union of Iowa. In that role, Rita has proven time and again to be an articulate and effective voice on issues affecting free speech, freedom of the press and freedom of expression in our state. Among the cases she has taken on are ones challenging Windsor Heights' city sign ordinance that treated some anti-sidewalk signs differently from other signs and another in which the ACLU sued the City of Sibley over its threats of legal action against a local resident whose website was critical of city officials and the rancid smell from a local factory. She has also been neck-deep in a lawsuit that challenges the constitutionality of Iowa's so-called "ag gag" law that restricts what can be reported, and how it can be reported, from inside animal confinement facilities. Most recently, she wrote to several cities demanding they change their panhandling ordinances that she said violate people's right to roadside free speech and penalize people based on the content of that speech.

o **Ann Wilson, Doug Burns and Jared Strong** are being honored for their strong, unwavering commitment to the First Amendment. Ann is the publisher of the Carroll Daily Times Herald; Doug is its editor, and Jared is the reporter whose skillful use of the open meetings and open records laws has led to many exclusive reports. This year, for example, the newspaper successfully defended itself against a lawsuit that challenged Strong's authoritative account of a Carroll police officer who had been accused of preying on teenage girls while on duty. The Daily Times Herald's defense of the case came at a significant financial cost to the newspaper. But Ann and Doug never hesitated to bear that expense and stand up for the excellent reporting that Jared had done in shining the spotlight on an officer who was forced to resign as Strong gathered information for his article.

HOW WE ARE SPENDING (Y)OUR MONEY: The generosity of our donors has enabled the Iowa

FOI Council to be more aggressive in pursuing legal action when we think there is an opportunity to have a positive influence on legal disputes going on in Iowa.

Here are three cases in recent months where the Iowa FOI Council has gone to court:

o Autumn Steele death investigation. A state administrative law judge recently held the final evidentiary hearing in the Iowa Public Information Board's charges against the City of Burlington and Iowa Department of Public Safety for violating Iowa's public records law by refusing to release certain law enforcement records related to the shooting death of Autumn Steele by Burlington police officer Jesse Hill. A decision is expected soon.

The city recently reached a \$2 million settlement with the Steele family in its wrongful-death lawsuit against the police department and officer Hill. Many of the motions, pleadings and evidence filed in the lawsuit were sealed from public inspection.

On Aug. 1, the Iowa FOI Council went in to U.S. District Court in Davenport to argue that those records, as well as the police body camera videos and other law enforcement files entered into evidence in the lawsuit, should be made public. Des Moines attorney Michael Giudicessi, the Iowa FOI Council's go-to font of legal wisdom for most of our existence, represented the council at the hearing.

You can read a copy of the FOI Council's legal brief by clicking here:

<https://tinyurl.com/yat2a4f5>

Click below to read a copy of a column by Randy Evans on the secrecy that has surrounded the investigation of officer Hill's actions in the death of Autumn Steele.

<https://tinyurl.com/yaxf8gqx>

And here is the decision by U.S. District Judge James Gritzner in which he ruled in favor of the Council's request and said he would unseal the videos and other documents in the court file: <https://tinyurl.com/yd84fuqb>

o "Ag-gag" lawsuit. The Iowa FOI Council and the Iowa Center for Public Affairs Journalism, the parent organization for Iowa Watch, recently filed a friend-of-the-court brief in support of the federal lawsuit that challenges the constitutionality of Iowa's so-called "ag-gag" law. That statute makes it a crime to report accurate information about conditions in livestock confinement facilities under certain circumstances.

In the court brief, the Council says, "Undercover investigations deserve First Amendment protection as crucial building blocks to informing public debate around proper animal care and food-handling practices."

The brief added, "While a majority of Americans consumer news daily about the food they eat, powerful farm interests and sympathetic lawmakers have scrambled to suppress any unflattering coverage of inhumane slaughterhouse practices, unsanitary factory conditions and worker abuses through so called 'ag-gag' legislation."

The brief urges the U.S. District Court to enjoin state officials from enforcing Iowa's law for the same constitutional reasons that similar laws have been struck down in other states.

A copy of our legal brief, which was prepared by Des Moines attorney Gary Dickey Jr., can be read here: <https://tinyurl.com/y87faws7>

The lawsuit was filed by the American Civil Liberties Union of Iowa.

o Access to traffic camera tickets. This summer, a district judge in Ottumwa ordered the Ottumwa Police Department to release the names of motor vehicle owners who receive tickets from the city's traffic cameras. Mark Leonard sought records of all speed limit violations

recorded by the cameras, even if the Ottumwa Police Department later decided not to issue civil infraction citations to some vehicle owners.

The city appealed the decision to the Iowa Supreme Court.

The Iowa FOI Council, in a friend-of-the-court brief filed with the Supreme Court, said the judge made the correct decision. Click here to read our brief, which was prepared by Des Moines attorney George Davison Jr.: <https://tinyurl.com/y8fvdfdc>

In his ruling, District Judge Randy DeGeest concluded that the tickets issued by the traffic enforcement cameras are not confidential under the federal Driver Privacy Protection Act, nor under Iowa's public records law. He said neither the federal law nor its Iowa companion law makes information about "vehicular accidents, driving violations, and driver's status" confidential.

The judge had an eloquent summation of the importance of Iowa's public records law, and DeGeest's language should be remembered, and quoted, by advocates for improved government transparency: "Iowa Code Chapter 22 establishes the public's right to examine governmental records as a policy of the State of Iowa. This Court's decision supports and honors that policy allowing the citizens to have knowledge of the actions of their government. Governmental entities are in place to serve the public, and the public has the right to see and inspect documents to ensure the public is being served in an appropriate and legal manner."

You can read Judge DeGeest's full decision here: <https://tinyurl.com/ydfdluye>

MORE SECRECY: The Cedar Rapids Gazette was in Johnson County District Court last month as an intervenor in a lawsuit Rocky Mountain Holdings LLC has filed against University of Iowa Hospitals in attempt to get a judge to rule that the company's contract with the hospitals and their operations agreement is a confidential trade secret. The company provides helicopter ambulances that serve the Iowa City hospital, as well as hospitals in Waterloo and Dubuque.

You can read the Gazette's news report about the contract, which includes certain payments from Rocky Mountain Holdings to University Hospitals. Hospital officials have refused to disclose the amount of those payments, citing the company's assertion of the trade-secret protection. Here is the Gazette article: <https://tinyurl.com/ycgppe69>

Here is a recent column Randy Evans wrote about the trade secret exemption in Iowa's public records law: <https://tinyurl.com/ybsvcyow>

Here is a copy of the Gazette's court brief in the case: <https://tinyurl.com/y9w7ndnw>

FOR YOUR CALENDAR: Besides our annual meeting and the Iowa Watch dinner on Sept. 27, here are some other events on the Iowa FOI Council calendar:

- o Zack Kucharski, executive editor of the Cedar Rapids Gazette and the council's 2018 president, will represent us at the National Freedom of Information Coalition's annual summit, which will be held in Cincinnati on Sept. 28 and 29.

- o Randy Evans spoke on government transparency at the annual conference of the Iowa State Association of Counties on Aug. 24 in Des Moines.

- o Evans spoke at the annual summer conference of the Iowa Parks and Recreation Association in Fort Dodge on Sept. 11, addressing open records issues.

- o Evans spoke about government transparency on one of the panels at the Cedar Rapids Gazette's "Iowa Ideas" conference on Sept. 20 in Cedar Rapids.

o Oct. 2 is the publication date for the first book by one of our trustees, Pulitzer Prize-winning editorialist Art Cullen, the editor of the Storm Lake Times. Cullen's book is titled, "*Storm Lake: A Chronicle of Change, Resilience, and Hope from a Heartland Newspaper.*" The publisher is Viking/Penguin Books, no fly-by-night publishing house. On Saturday, Oct. 6, Art will read from his book and sign books as part of the Iowa City Book Festival. Art's session begins at 4:00 p.m. in Meeting Room A of the Iowa City Public Library, 123 S. Linn St.

o The Iowa FOI Council expects to have the 2019 edition of our "*Iowa Open Meetings, Open Records Handbook*" back from the printer in mid-January.

FINANCIAL UPDATE: The Iowa FOI Council's annual budget typically is about \$20,000. Our largest sources of revenue are (1) dues paid by corporate and institutional members and by individuals who choose to join us, (2) sales of the Iowa Open Meetings, Open Records Handbook, which is now in its 17th edition, which we publish in odd-numbered years, and (3) donations from people in Iowa and around the United States who have heard about the work we are doing.

Those donors include journalists who are grateful for the Iowa FOI Council's assistance their efforts to obtain records from government officials and ordinary citizens who want to support government accountability.

A detailed year-to-date summary of our 2018 finances will be distributed on Sept. 27 at the annual meeting. If you cannot attend but would like to receive a copy of the handout, send me an email and I will get a copy to you.

CLOSING THOUGHTS. Thank you for your support, both moral and financial. The Iowa FOI Council could not take on all that we do without your support. If you are not already a member, we invite you to join us. Here are our three membership levels:

- o **Sustaining Members** -- \$650 per year
- o **First Amendment Members** -- \$250 per year
- o **Individual Members** -- \$100 per year

And we are not financial snobs. Donations of any amount are always welcome. You can mail your check to us at:

P.O. Box 8002
Des Moines, IA 50301

Or you can go to our website, www.ifoic.org, and click the "Donate" button to make your donation by credit card.

As always, if you have questions about Iowa's "sunshine" laws, want our advice on strategies to use in challenging secrecy, or have an issue you want the council to know about, shoot me an email or give me a call.

We are here to help bring more sunshine into Iowa's state and local government.

-- *Randy Evans*

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