The Iowa Freedom of Information Council annual meeting will focus on media coverage of the judiciary, especially coverage of the controversial Iowa Supreme Court retention elections last fall. A panel featuring journalists, judges, lawyers and experts on the judiciary will provide perspective.

The meeting will be held on Friday, Oct. 7, in Levitt Hall of Old Main at Drake University. Registration will begin at 11:30 a.m., followed by lunch at noon. The luncheon program will include presentation of the Council’s annual Harrison “Skip” Weber Friend of the First Amendment Award. The panel discussion will begin at approximately 1 p.m., and the Council’s annual business meeting will follow.

Reservations cost $15 and must be made by Friday, Sept. 30.

For more information, contact Kathleen Richardson at 515-271-2295 or Kathleen.Richardson@drake.edu.

See Registration Form on Page 9
BRANSTAD’S OFFICE STILL CHARGING FOR LEGAL REVIEW

During the 2010 gubernatorial campaign, candidate Terry Branstad criticized Gov. Chet Culver’s practice of charging record requesters an hourly fee for the governor’s attorneys to review documents before releasing them.

However, in July the office of now-Governor Branstad said it would charge the Iowa City Press-Citizen $300-462 for an attorney to review 1,190 e-mails between the governor’s office and the State Board of Regents.

Branstad’s office is now following the Culver administration’s policy of allowing three free hours of legal review, and $33.65 an hour after that. The open records law allows government bodies to charge “reasonable” fees to cover costs of examination and copying of public records.

The governor’s office says that budget constraints and short staffing have led to the lawyers’ fees. Critics of the practice say that adding attorney’s fees to the price of public records requests is not reasonable and discourages citizens from requesting documents. Requesters could also be forced to pay large fees for legal review of documents, but then end up being denied access to the information they are seeking.

FEDERAL COURT CHOSEN FOR TEST

The U.S. District Court for the Southern District of Iowa has been chosen as one of the sites participating in a three-year experiment in allowing camera coverage of federal courts.

The Judicial Conference announced the pilot project in 2010 and released the sites and rules for the test in June.

The rules governing the pilot project are restrictive, with no live broadcast allowed. The cameras and video are under control of the judiciary, and judges have complete discretion over which cases can be covered, with no provision for appeal of rejection. The judge can order the cameras shut off at any time. Video coverage will be posted on the federal courts’ central website as well as the local court’s site. Media outlets will be able to draw footage from the courts’ online video feed.

The federal courts last tested cameras in courtrooms in the early 1990s, but the experiment derailed when the excesses of the O.J. Simpson murder trial caused the judiciary to fear that cameras would disrupt the legal system.
In an extended session marked by a deadlock over the state budget, the 2011 Iowa Legislature enacted numerous changes to the state’s open meetings and records laws.

However, creation of a state freedom of information board was not among those changes. While the creation of a state access counselor to provide training, advice and enforcement of the Sunshine Laws was discussed for a fourth year, it again failed to advance.

Among the FOI-related changes that the governor did sign into law:

- An Internet database was established to allow the public to search for information on how the state spends tax dollars and the results. The database, established by House File 45, shall become available by Jan. 1, 2013.
- Senate File 289 provided that a reconvened meeting of a government body is also subject to the notice requirements of Chapter 21, the Iowa open meetings law, unless it is reconvened within four hours of recess. The time, date, and place of the reconvened meeting must be announced at the original meeting, and the agenda must be the same to avoid new notice.
- The civil penalties for violations of the open meetings and open records laws were increased from $100-500 to $1,000-2,500 for knowing violations. The criminal penalty of Chapter 22, the public records law, was repealed. [SF 289]
- Chapter 21.5 was amended to allow closed meetings to discuss the sale of real estate when premature disclosure could reasonably be expected to decrease the price received for the property. Previously, closed meetings were allowed only to discuss the purchase of real estate. [SF 289]
- Chapter 22.7(7) was changed to allow appraisal information concerning the sale of real estate for public purchases to be kept confidential prior to execution of any contract. [SF 289]
- Government bodies that finalize settlement agreements must release a summary of the nature of the dispute, the parties involved and terms of the settlement under a rewritten Chapter 22.13. [SF 289]

Perhaps the most extensive change that SF 289 made was to Chapter 22.7(11), which allows government agencies to keep confidential the personal information in personnel records. That section was amended to specify the sorts of personal information about government officials, officers or employees that must be released:

- Name and compensation of the individual, including employment contract, pay, anything of value conferred for services rendered and complete benefit information.
- Dates of employment by the government body and positions held.
- Resume information, including education and degrees, and work experience, previous employers and positions.
- The fact that the individual was discharged as a result of disciplinary action, once all remedies are exhausted.

In addition, the Legislature reorganized the Iowa Department of Economic Development into a public-private partnership: the Iowa Economic Development Authority (the public piece) and the Iowa Innovation Corp. (the private entity).

The law creating the new organization (House File 590) built in some transparency:

- The private corporation will submit an annual report to the governor, Legislature and state auditor.
- The meetings of the corporation board that pertain to utilization of public funds must conform to the open meetings law and the meeting minutes are covered by the public records law.
- All corporation records pertaining to the utilization of public funds are subject to the open records law.
Lee County supervisor accuses board of holding illegal meetings

Lee County Supervisor Gary Folluo said that the board violated the Iowa open meetings law. Folluo told the Burlington Hawk Eye that the board met with its attorney, Patrick O’Connell, on May 12 without giving proper notice. The meeting was called to discuss a lawsuit filed by a former employee.

Folluo said he told his fellow supervisors that they had to follow the notice provisions of Chapter 21 and then go into closed session to discuss litigation, which is allowed under the law. The county attorneys argued that no legal “meeting” was held because they were just gathering facts and that no “policy making” occurred.

School district privately reaches settlements with four administrators

The Southeast Polk School Board reached closed-door agreements totaling $292,000 with four district administrators who agreed to resign or retire. The agreements came to light in April when they were placed on the agenda for an open board meeting. The arrangements were not discussed in public board meetings, though district officials said the documents would have been made available if anyone had asked.

When asked how the board managed to reach agreement on the settlements without meeting, Board President Lori Slings told The Des Moines Register: “I don’t even, and I can’t even, I guess some of them, I am not even, I wasn’t even on, to even, I can’t even really comment on any of that. . . . I’m trying to make sure I’m not saying anything. I don’t feel there was ever any, there was never a whole, any type of discussion.”

Dubuque library board attempts to hire “Andrew” as director

The Dubuque County Library Board voted in open session in March to hire “Andrew” as the new director of the library. However, the board declined to fully identify the applicant and said he would be identified only if he accepted the job. The Dubuque Telegraph-Herald used a Google search to identify the applicant and contact him. The board president then accused the newspaper of acting like a “playground bully” and sabotaging the search. “Andrew” did not accept the job.

City administrator’s goals are top secret

The Waukee City Council approved the goals and evaluation of City Administrator Jeff Kooistra in September 2010, but then announced that those goals were part of his confidential personnel file and refused to release them. The goals for city managers in neighboring communities are posted on the respective government websites.

D.M. School District seeks input, but not in public

Des Moines school superintendent Nancy Sebring formed a community advisory committee to provide public input on budget issues, but then considered keeping the public out of the committee’s meetings.

Silver City saga proves case study of need for access counselor

A citizen’s efforts to resolve a series of open meetings complaints was presented to the Iowa Legislature in March as a case study for the need of an access counselor.

Nancy Allen contacted the Iowa Freedom of Information Council after unsuccessfully attempting to receive help in resolving her dispute with the City Council of Silver City, Iowa. Allen, a trustee on the city library board, said she believed the Council was violating the open meetings law in its handling of disputes over control of the library. Allen had contacted the Attorney General’s Office, the Southwest Library Services Area, the State Library, the State Auditor’s Office and the Office of Citizens’
Aide/Ombudsman, but was dissatisfied with the responses she received.

“As you are well aware, in Iowa it seems extremely difficult to get a City Council to follow its own and state ordinances. A citizen has nowhere to turn for true help,” Allen said in an e-mail.

**Judge criticizes secrecy in U of I hospital settlement**

District Judge Eliza Ovrum criticized the secrecy in a medical malpractice settlement between the University of Iowa Hospitals and Clinics and the estate of a Des Moines man who claimed physicians’ mishandling of his treatment resulted in his death.

Ovrum in June refused to approve the $475,000 settlement, which required the plaintiffs never to divulge the terms of the deal. Ovrum later approved the settlement, but said that the confidentiality provision did not apply to University Hospitals, because settlements with government bodies are public records open to inspection.

**U of I silent on its investigation into researcher on paid leave**

The University of Iowa consistently refused to release information involving an investigation into a prominent university researcher who was paid hundreds of thousands of dollars while on leave.

In December 2010, U of I police closed a seven-month investigation into Gary Hunninghake and prosecutors declined to bring charges. But the university never said why it was investigating him, and a judge ordered search warrants in the case sealed.

Hunninghake was on paid leave for a year from his $360,000 a year job, before he resigned in spring 2011. The clinical researcher had told Chicago police in 2010 he was stabbed and robbed, but later admitted that the report was false.
School board association criticized for failing short in records release

The Iowa Association of School Boards, criticized for ousting a vocal critic from its governing board, was the topic of articles in The Des Moines Register in July that pointed out that the association had failed to publicly disclose e-mails requested under the public records law.

The Legislature amended the Iowa Code to require the IASB, which is funded by member school districts with taxpayer money, to comply with the Sunshine Laws after alleged financial improprieties in 2010. The Register requested access to 2011 e-mails between IASB and its public relations consultant, and the newspaper questioned whether the IASB had fully complied with the request.

The Register in December 2010 had called the IASB to task for turning over redacted invoices without indicating that information was missing.

Feds prohibit state from releasing information on nursing homes

The Iowa Department of Inspections and Appeals told The Des Moines Register in August that federal rules prohibited it from releasing statistical information about nursing inspections.

The Register had asked the state to release records regarding uninvestigated complaints of poor nursing home care, the number of violations cited by the state and the average amount of time spent on nursing home inspections.

Iowa State refuses to release details of sexual harassment cases

Iowa State University officials reported to the Board of Regents in August that it had filed four disciplinary cases against faculty, including three allegations of sexual harassment. However, the university declined to release the complaints, saying the cases will become public only if they result in a final decision to terminate the employees. ISU general counsel Paul Tanaka said the cases were covered by the exception in Chapter 22 that allows government entities to keep some personnel information secret.

Initial hearing in murder case closed

The Storm Lake Times reported in early August that the bond hearing in a first-degree murder case was closed to the public.

Tracey Richter-Roberts was charged with murder in a 10-year-old slaying that she has claimed was self-defense. Richter-Roberts’ attorney, Scott Bandstra of Des Moines, the Times that he would move to close all pretrial proceedings in the case.

The Iowa Freedom of Information Council encouraged the court to consider the overwhelming legal presumption against closed criminal proceedings established by both the Iowa Supreme Court and the U.S. Supreme Court.

GRANT FINANCES FOI WEBINARS FOR OFFICIALS

The Iowa Freedom of Information Council teamed up with three associations of government officials to produce a series of webinars this summer on open government issues.

The webinars, financed with a grant from the John S. and James L. Knight Foundation through the National Freedom of Information Coalition, covered open meetings and public records laws, and also included a session for government officials on working with the media. The webinars were produced with the help of the Iowa Newspaper Foundation, the Iowa Broadcasters Association, the Iowa League of Cities, Iowa Association of Counties and Iowa Association of School Boards.

The webinars are archived on the Iowa Newspaper Association website (www.inanews.com). Copies of the Powerpoints are also available from Kathleen Richardson (kathleen.richardson@drake.edu).
OMBUDSMAN SUBSTANTIATES 23 COMPLAINTS

The Office of Citizens’ Aide/Ombudsman reported fielding 263 meetings-, records- or privacy-related complaints or information requests in 2010, down slightly from 268 in 2009.

Of the 179 complaints, 23 were substantiated. Among the cases in the ombudsman’s 2010 report:

- A regional planning commission illegally conducted a secret ballot.
- A school board published minutes late and incomplete.
- A sheriff declined to release the required date, time, specific location, and immediate facts and circumstances surrounding an officer-involved shooting.
- A city utility refused to comply with a citizen’s request for billing information for local users, saying it didn’t have the software required to fulfill the request and releasing the information would harm its “competitive position.” That case was referred to the Attorney General’s Office for enforcement.
- A city refused to disclose details of a settlement agreement with its outgoing financial director.

In addition, in a report released in July 2011, the ombudsman’s office concluded that the mayor and some City Council members in Monticello skirted the open meetings law when they met in a series of meetings in an effort to oust the city administrator. While the “walking quorum” did not technically violate the law, the ombudsman’s report said the procedure violated the spirit of open government.

SUPREME COURT DECLINES TO ERASE E-RECORDS

In cases that tested the limits of transparency in the age of digital records, the Iowa Supreme Court in July declined to allow defendants who win criminal cases to demand that the electronic records of their cases be removed from government databases.

Two cases brought the issue before the high court. In one, a man charged in Linn County with drunken driving and other offenses prevailed on a motion to suppress evidence and the charges were dismissed. The district court then granted the man’s request to have the charges erased from the electronic databases of the state judicial branch, Department of Public Safety and the Division of Criminal Investigation, the Linn County Sheriff’s Office, the Linn County Attorney’s Office and the Cedar Rapids Police Department.

In a second case, charges against a woman who was charged with assault in Polk County were dropped, and she won her request to expunge the dismissed criminal charges from state, county and Des Moines judicial and law enforcement databases.

In both cases, hard copies of the records would have remained at government offices.

In July, the Iowa Supreme Court ruled that the district court judges in the two cases had improperly granted the expungements. The Court said that the cases “illustrate the impact of the Internet on our daily affairs,” and pointed out that by putting the records online, the government has eliminated the “practical obscurity” of public records buried in city halls and courthouses.

While the Court said that the Legislature may decide to revisit the issue in the future, current law reflects a legislative intent that “public access to official records must be preserved, even if a defendant is acquitted or has charges dismissed.” The ruling also quoted a Massachusetts case that stressed that “the importance of public access to the proper functioning of our judicial system cannot be overstated.”

[Judicial Branch v. Iowa District Court for Linn County, No. 10-0163, and Department of Public Safety v. Iowa District Court for Polk County, No. 10-0985, July 15, 2011.]

Plan allows lawyers to keep discipline secret

The Iowa Supreme Court in August rejected a proposed rule change that would have allowed lawyers facing discipline for ethics violations to consent to a license suspension, forgoing formal
Rox Laird, an editorial writer for The Des Moines Register and a longtime Iowa FOI Council member, was the Council’s representative to this spring’s National Freedom of Information Coalition conference in Providence, R.I. This is his report.

Overall, I was struck by the fact that old-line news organizations are no longer the backbone of the freedom of information movement. As the business of newspapers and broadcasters has declined, FOI groups have turned to other sources of financial support, and broadened their bases to become more like citizen-activist groups. I was among maybe only a half-dozen working journalists in attendance. The rest were FOI group staffers and board members, or academics.

This is something we should think about for the future of the Iowa FOI Council. We are in better shape than most other states, in part because of the strong support of Drake University and our sustaining members. But, we should talk about whether we want to broaden the base in Iowa. I don’t think we want to recast our organization as a tea party for open government, which some have done, but we could reach out more to groups and individuals who are concerned about the same issues we are.

Why? In part because we would have more resources to advocate for legislative changes, to fight legal battles, to be more visible voice for government transparency and First Amendment protections. We could play a larger role in educating government officials on the need for openness, and help citizens exercise their rights. I think the environment is ripe for these things to happen.

What’s happening in some other states:

• The New England First Amendment Coalition works with law schools in the region to use law students as a resource to help citizens with access issues.

• In some states, legislatures have figured out how to pit newspaper groups against FOI groups by threatening to pull legal advertising requirements if the news groups make too much noise about access issues.

• The Texas FOI coalition has worked to broaden its base beyond press groups to include members of the public and outside professions, such as Realtors, to play a moderating role for legislators who have bad relations with the press.

• The FOI movement appears to remain strong, despite the decline of “mainstream media,” as the NFOIC is affiliated with groups like ours in 49 states.

• Many of these groups have diversified their boards of directors to reflect this change, by bringing on non-journalists, and board members are expected to make a financial contribution and help tap other sources of income.

• The Florida First Amendment Foundation is one of the most aggressive in going after big-dollar donations and grants, and in recruiting citizen members. They took their FOI show on the road and gave free trial memberships to people who showed up, and in exchange they took email and mailing addresses to build their database.

• Other states face the same issues we battle constantly. Karen Kaiser, a lawyer for the Associated Press, said the biggest issue they fight around the country is excessive fees, as much as $60 an hour, for retrieving public records.

• Questions are increasingly being raised about whether personal email accounts of public officials are open to public inspection. Then there is the growing problem of public officials communicating through text messages, instant messages, Facebook and Twitter, all of which raise new issues for us. One example: How will all of that communication be archived? Or will it disappear?

• This is not a hypothetical problem: The Detroit Free Press fought successfully to get IM and text messages from the former mayor, who was later sent to prison for misdeeds while in office, in part because of reporting by the Free Press based on those messages.

• Much of the serious work on freedom of information is being done by academics in places like the University of Missouri, but there are some interesting independent projects, like MuckRock.com, a Boston-based website that helps people file FOI requests, and then posts them online to show how slow the process can be. It’s worth taking a look at the site, which has the feel of a WikiLeaks operation without the cloak and dagger.

Overall, I believe it is worth our attending these annual conferences, if only to monitor what’s happening elsewhere and to learn some new tricks.
The rules change was intended to encourage lawyers to expedite disciplinary procedures, which currently can take years to resolve. However, in rejecting the recommendation by the Office of Professional Regulation, the Court said that the reasons for an attorney’s suspension are of public interest.

**Court allows Patrol to keep information secret**

The Iowa Court of Appeals ruled in February that Iowa State highway patrol video recordings, use of force reports and pursuit reports requested by a man arrested for driving while intoxicated and eluding police are covered by the police investigative reports exception to the Iowa open records law (Chapter 22.7(5)).

The court said that the Department of Public Safety had disclosed the “date, time, specific location, and immediate facts and circumstances surrounding” the plaintiff’s incident, and that the rest of the material requested could be withheld as part of the confidential investigative file.


**Defamation ruling appealed**


Scott Weier and Author Solutions, publisher of his autobiography, were sued by Weier’s ex-wife and her father. The Iowa district court judge granted the plaintiffs’ motion for summary judgment, ruling that statements in the book were libel per se and that because the defendants were not members of the mainstream media, they were not protected by the First Amendment safeguards laid out in New York Times v. Sullivan. The defendants are appealing.

[Weier v. Weier and Author Solutions, Inc., Iowa Supreme Court case No. 10-1503]

**Hearing closed in teen gunman case**

A judge closed a hearing in January to determine whether a Minnesota 17-year-old should be tried as a juvenile in the shooting deaths last November of two Iowa convenience store clerks. District Judge Thomas Bice wrote that juvenile, medical and mental health records presented at the hearing should be kept private. Both the U.S. and Iowa Supreme Courts have consistently supported public access to criminal court proceedings. The teen, Michael Swanson, was later tried as an adult and convicted of one murder and pleaded guilty to the second.
UPDATED LIST OF REGIONAL EMC COORDINATORS

Following is a current list of the EMC coordinators. The list is also available online at www.ifoic.org.

REGION #1
Allamakee, Clayton, Delaware, Dubuque counties
Brian Cooper, Telegraph Herald, 801 Bluff, Dubuque, IA 52004; (563) 588-5662 (bcooper@wcinet.com)

REGION #2
Howard, Chickasaw, Winneshiek, Bremer, Fayette, Butler, Grundy, Black Hawk, Buchanan counties
Nancy Raffensperger Newhoff, Waterloo-Cedar Falls Courier, P.O. Box 540, Waterloo, IA 50704; (319) 291-1400 or -1445 (nancy.newhoff@wcfcourier.com)

REGION #3
Winnebago, Worth, Mitchell, Hancock, Cerro Gordo, Floyd, Franklin counties
Matt Bradley, KIMT-TV, 112 N. Pennsylvania Ave., Mason City, IA 50401; (641) 421-2628 (mbradley@kimt.com)

REGION #4
Pocahontas, Humboldt, Wright, Sac, Calhoun, Webster, Hamilton, Hardin, Carroll, Greene, Boone counties
Jesse Helling, Fort Dodge Messenger, P.O. Box 659, Fort Dodge, IA 50501; (800) 622-6613 (jhelling@messengernews.net)

REGION #5
Lyon, Osceola, Dickinson, Emmet, Sioux, O’Brien, Clay, Palo Alto, Kossuth counties
Jeff Grant, N’West Iowa Review, 227 9th St., Sheldon, Iowa 51201; (712) 324-5347 (jeff_grant@iowainformation.com)

REGION #6
Plymouth, Cherokee, Buena Vista, Woodbury, Ida, Monona, Crawford counties
Mitch Pugh, Sioux City Journal, 515 Pavonia St., Sioux City, IA 51102; (712) 293-4201 (mitchpugh@siouxcityjournal.com)

REGION #7
Harrison, Shelby, Audubon, Pottawattamie, Cass, Mills, Montgomery, Fremont, Page counties
RoseAnn Shannon, KETV, 2665 Douglas Street, Omaha, NE 68131; (402) 978-8951 (rshannon@hearst.com)

REGION #8 and APPELLATE COURTS
Story, Marshall, Guthrie, Dallas, Polk, Jasper, Madison, Warren, Marion counties
Amanda Lewis, KCCI-TV, 888 9th St., Des Moines, IA 50309; (515) 344-2886 (arlewis@hearst.com)

REGION #9
Adair, Adams, Union, Clarke, Lucas, Taylor, Ringgold, Decatur, Wayne counties
Stephani Finley, News Advertiser, 503 W. Adams, Creston, IA 50801; (641) 782-2141, x236 (sfinley@crestonnews.com)

REGION #10
Tama, Benton, Linn, Jones, Iowa, Johnson counties
Lyle Muller, Cedar Rapids Gazette, P.O. Box 511, Cedar Rapids, IA 52406; (319) 398-8210 (lyle.muller@gazettecommunications.com)

REGION #11
Clinton, Cedar, Jackson, Scott, Muscatine counties
Mike Ortiz, KWQC, 805 Brady St., Davenport, IA 52803; (563) 383-7156 (mortiz@kwqc.com)

REGION #12
Poweshiek, Mahaska, Keokuk, Monroe, Wapello, Jefferson, Appanoose, Davis, Van Buren counties
Ottumwa Courier, 213 E. 2nd St., Ottumwa, IA 52501; (641) 683-5380 or (641) 226-4160

REGION #13
Washington, Louisa, Henry, Des Moines, Lee counties
John Mangalonzo, The Hawk Eye, 800 S. Main Street, Burlington, IA 52601; (319) 758-8136 (jmangalonzo@thehawkeye.com)