

Public Abstract

First Name:Daxton

Middle Name:Rinehart

Last Name:Stewart

Adviser's First Name:Charles

Adviser's Last Name:Davis

Co-Adviser's First Name:

Co-Adviser's Last Name:

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Use of Ombuds and Other Dispute Resolution Systems in State and Federal Sunshine Laws

Transparency is essential to democracy. In the United States, the federal government, the District of Columbia, and every state have passed laws to ensure the openness of government meetings and records.

People seeking access to public records and meetings under state and federal open government laws have the right to sue in court to enforce them. However, enforcement of these laws in the courts has proven to be difficult because of the amount of time and money it can cost for citizens to pursue claims. In response to this dilemma, several jurisdictions have created alternative systems to handle disputes arising under public access laws. This has happened as alternative dispute resolution has grown as a field over the past three decades. This study applies principles of Conflict Theory and Dispute Systems Design to examine the systems in place in each jurisdiction to handle disputes arising under open government laws.

First, using legal research methods, formal dispute resolution systems in each jurisdiction were examined, and a typology of systems was developed that identified five models: Multiple Process, Administrative Facilitation, Administrative Adjudication, Advisory, and Litigation. Second, ten experts in the freedom of information field were interviewed to examine any informal dispute resolution systems that may be in place. These included lines of informal negotiation that were available for citizens, news media and government employees, typically through advocacy organizations. However, sources generally agreed that informal systems needed to be complemented with more formal alternative dispute resolution systems.

Several states have created ombuds programs to provide independent and impartial oversight of public access disputes. In the third step of this study, case studies were conducted of three public access ombuds programs â€“ Iowaâ€™s Citizensâ€™ Aide/Ombudsman, Virginiaâ€™s Freedom of Information Advisory and Arizonaâ€™s Ombudsman-Citizensâ€™ Aide â€“ to examine the effectiveness of these kinds of offices in handling open government disputes. The case studies were assembled using depth interviews, government documents and news media reports.

The study concluded that ombuds programs, if established following the tenets of Dispute Systems Design and the experiences of other public access ombuds, have great potential to constructively manage public access disputes. Six specific best practices recommendations were made for designing a public access ombuds program: (1) Involve stakeholders in the design process, (2) Ensure the officeâ€™s impartiality, (3) Choose a strong leader, (4) Get stakeholders invested in the officeâ€™s success early, (5) Emphasize training and education, and (6) Periodically evaluate the programâ€™s effectiveness.