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Tuesday, 01/01/08

## State's new ombudsman office has answers on open records law

*Education of citizens, officials is goal, but office does not have enforcement power*

By BETH RUCKER  
Associated Press

The state's new open records ombudsman [office](#) has a mission to help Tennesseans obtain local government records, but the staff will be relying on the power of persuasion if local officials balk.

The new director, Ann Butterworth, and open records specialist Elisha Hodge haven't been given authority to enforce the state law that requires most records to be available to the public. They expect, though, that officials who try to withhold records will relent once the law is explained to them.

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"We do not intend to just leave it, but I believe we'll be able to work with them to come to a

mutual agreement," Butterworth said. "If we don't, then I don't know, but our goal is to not come to that situation."

The Public Records Act says all state, county and municipal records are to be available for inspection by any Tennessee citizen — unless a record is specifically exempt. There are hundreds of such exemptions in the law, such as medical records, sensitive military documents and investigative records of the Tennessee Bureau of Investigation



enlarge 

Ann Butterworth, left, director of the new Tennessee Office of Open Records Ombudsman, works with open records specialist Elisha Hodge. (MARK HUMPHREY / ASSOCIATED PRESS)

## No authority given

Gov. Phil Bredesen proposed the ombudsman office to help Tennesseans navigate the complex open records law.

The legislature approved Bredesen's budget proposal to create the ombudsman post in the state comptroller's office, but state law wasn't changed to give the ombudsman enforcement authority.

"We work with folks who have made a request," Butterworth said. "Our office will not function as a point where you call to request a record."

A 2004 audit in Tennessee by reporters, college students and volunteers found that government agencies denied access to public records about a third of the time. The audit showed that about 40 percent of Tennessee sheriffs said an arrest report is not a public record — even though the law specifies it should be open to the public.

The ombudsman office's scope is limited. It tries to help shake loose local government records, but it isn't authorized to help Tennesseans get records from state government officials or get involved in disputes over whether the law was violated.

## It advises, not enforces

The few calls the office has received related to open meetings or state government records. Butterworth and Hodge tried to direct those complaints to others who can help.

A legislative study committee reviewing the state's open government laws recommended making the ombudsman a position that advises governmental officials and the public on when government meetings and records must be public. It did not recommend whether the legislature should give enforcement authority.

The only recourse for people who think they've been improperly denied access to a public record is to file a lawsuit. That can be expensive, and it's up to a judge to decide whether to order a government that violated the open records law to pay the costs of the lawsuit.

Butterworth and Hodge each has years of experience working with government officials or members of the public, but neither has specific experience in handling open records requests.

Butterworth, who also works as assistant to the comptroller for public finance, has spent 20 years with the comptroller's office working with local governments.

Hodge had worked three years with the general counsel for the Tennessee Department of Health before



Ann Butterworth is director of the new Tennessee Office of Open Records Ombudsman. The office seeks to help residents obtain local government records. (MARK HUMPHREY / ASSOCIATED PRESS)

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taking her new position and said she's accustomed to interacting with the public.

The ombudsman office is required to provide a regular report to the General Assembly of what complaints they've received and where they've encountered problems with access to records.

Butterworth and Hodge plan to raise the profile of their new office by speaking at citizen and local officials' groups.

"Once you educate people, I think there will be less problems going into the future," Hodge said. "We are absolutely going to take up the task of educating local officials as well as citizens about exactly what the open records law requires and how people are to access records."

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I have been denied access to public records twice this year. Both times it was concerning activities of the Chamber of Commerce. The records that were finally given to me in the first case were incomplete. In the second case, the records that were suppose to be on file in the County Clerks Office were not on file and they had no idea that they were suppose to be on file there.

Posted: Tue Jan 01, 2008 8:54 am

This office is another complete waste of money. Apparently we were the first to try to obtain information. All Ms. Butterworth did was ask the same groups that refused to turn over the information that refused to turn over anything all along. Guess what they said no and that was that. The information we are talking about were the investigations into the assaults on my Autistic daughter. The groups refusing were Metro Police, DA's Office and Metro Schools. Wonder what we are hiding? Thank you for another do nothing Government agency.

Posted: Tue Jan 01, 2008 7:19 am

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