

PROPOSED LAW WOULD SPEED FOI APPEALS

By JULIEANNE MILLER, Democrat-Gazette Fort Smith Bureau November 21, 1994

Publication: Arkansas Democrat-Gazette (Little Rock, AR) Page: 3B Word Count: 582

PROPOSED LAW WOULD SPEED FOI APPEALS

FORT SMITH -- State Rep.-elect R. Gunner DeLay of Fort Smith said Friday he will propose legislation requiring the state Supreme Court to expedite appeals hearings for Freedom of Information Act lawsuits filed with the court.

DeLay, a lawyer, represents the Westark Christian Action Council, a Fort Smith-based nonprofit group headed by Dale Morfey. The council sued the state Department of Health, department director Dr. Sandra Nichols and Henry Robinson, director of the Vital Statistics Division, after the council's July 3 FOI request for abortion statistics in Sebastian, Crawford and Washington counties was denied.

The group won its lawsuit Aug. 16 in Sebastian County Circuit Court. However, the Health Department appealed Circuit Judge Don Langston's ruling because it claims the requested information constitutes medical records, which are exempt from disclosure under the FOI law, as well as being vital records protected from disclosure by a 1982 law.

The records show where an abortion occurred; the woman's age, race, education level and county of residence; and whether she previously had a child or an abortion.

The agency uses the information for birth and fertility statistics, directing family planning, and predicting and defining public health problems.

"The purpose of the FOI is to ensure immediate access to records," Morfey said, "but obtaining those records is thrown out the window by the procedure being used now. ... This is

one of the abuses the FOI was to guard against."

The existing appeals process, he said, is not in the "spirit of the FOI's intent. ... Our fear ... continues to be the documents in the state's possession at the time of the initial request are being tampered with or destroyed."

Morfey also complained the media has shown little interest in this particular FOI lawsuit and the importance of free access to public documents.

DeLay said the FOI law should reflect a maximum appeals process of 60 days, considering circuit courts are directed by law to provide an expedited hearing within seven days of a petition being filed.

"It doesn't make sense that we should hurry up and present a complaint to a judge within seven days, then take a year or more to appeal that judge's ruling," DeLay said. "It's clear the Legislature intended for these cases to be heard promptly, but FOI is not a burning issue on everybody's mind."

Robert Fisher, a spokesman at the state attorney general's office, said he could not comment on the proposed legislation until it is actually introduced as a bill to the General Assembly.

George Harper, general counsel for the Health Department, denied that Health Department workers had destroyed or altered the records Morfey's group has sought. Harper declined to speculate on whether DeLay's proposed expedited appeals process is workable.

Carol Griffie of the Arkansas Press Women said Friday the "precedent already exists for circuit courts, so why not extend it to the Arkansas Supreme Court? I'm sure the Supreme Court would not be happy about this because it does not like to be stripped of any discretion and one of its powers is to determine whether appeals should be heard on an expeditious basis."

DeLay said he also favors adding a provision to the FOI law that disputed records should automatically be deposited into the trial court's registry when an appeal is filed.

DeLay recently asked Langston to set a hearing to decide whether those abortion records should be filed with the court clerk until the appeal is finalized because "there may be some danger those files could be misplaced, lost or altered."

Arkansas Democrat-Gazette (Little Rock, AR)

Date: November 21, 1994

Page: 3B

Copyright 1994, 2012, Arkansas Democrat-Gazette.